

SENATE BILL No. 350

DIGEST OF INTRODUCED BILL

Citations Affected: IC 32-25.5.

Synopsis: Uniform common interest ownership act. Establishes procedures concerning the formation, management, and termination of common interest communities, including condominiums, planned communities, and real estate cooperatives. Specifies that the procedures apply to all common interest communities formed after June 30, 2007, with certain exceptions. Requires disclosure of certain facts to buyers about common interest property for sale.

Effective: July 1, 2007.

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January 16, 2007, read first time and referred to Committee on Judiciary.

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Introduced

First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

SENATE BILL No. 350

A BILL FOR AN ACT to amend the Indiana Code concerning property.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 32-25.5 IS ADDED TO THE INDIANA CODE AS
2 A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1,
3 2007]:

4 ARTICLE 25.5. COMMON INTEREST OWNERSHIP

5 Chapter 1. Applicability, Definitions, and General Provisions

6 Sec. 1. This article may be cited as the Uniform Common
7 Interest Ownership Act.

8 Sec. 2. Applicability of this article is governed by IC 32-25.5-2.

9 Sec. 3. Unless specifically provided otherwise or the context
10 otherwise requires, the definitions in this section apply throughout
11 this article:

12 (1) "Affiliate of a declarant" means any person who controls,
13 is controlled by, or is under common control with a declarant.

14 A person:

15 (A) "controls" a declarant if the person:

16 (i) is a general partner, officer, director, or employer of
17 the declarant;

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(ii) directly or indirectly or acting in concert with one (1) or more other persons, or through one (1) or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than twenty percent (20%) of the voting interest in the declarant;

(iii) controls in any manner the election of a majority of the directors of the declarant; or

(iv) has contributed more than twenty percent (20%) of the capital of the declarant; and

(B) "is controlled by" a declarant if the declarant:

(i) is a general partner, officer, director, or employer of the person;

(ii) directly or indirectly or acting in concert with one (1) or more other persons, or through one (1) or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than twenty percent (20%) of the voting interest in the person;

(iii) controls in any manner the election of a majority of the directors of the person; or

(iv) has contributed more than twenty percent (20%) of the capital of the person.

Control does not exist if the powers described in this subdivision are held solely as security for an obligation and are not exercised.

(2) "Allocated interests" means the following interests allocated to each unit:

(A) In a condominium, the undivided interest in the common elements, the common expense liability, and votes in the association.

(B) In a cooperative, the common expense liability and the ownership interest and votes in the association.

(C) In a planned community, the common expense liability and votes in the association.

(3) "Association" or "unit owners' association" means the unit owners' association organized under IC 32-25.5-3-1.

(4) "Common elements" means:

(A) in the case of:

(i) a condominium or cooperative, all parts of the common interest community other than the units; and

(ii) a planned community, any real estate within a planned community which is owned or leased by the association, other than a unit; and

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- 1 (B) in all common interest communities, any other interests
 2 in real estate for the benefit of unit owners which are
 3 subject to the declaration.
- 4 (5) "Common expenses" means expenditures made by, or
 5 financial liabilities of, the association, together with any
 6 allocations to reserves.
- 7 (6) "Common expense liability" means the liability for
 8 common expenses allocated to each unit under IC 32-25.5-2-7.
- 9 (7) "Common interest community" means real estate with
 10 respect to which a person, by virtue of the person's ownership
 11 of a unit, is obligated to pay for real estate taxes, insurance
 12 premiums, maintenance, or improvement of other real estate
 13 described in a declaration. "Ownership of a unit" does not
 14 include holding a leasehold interest of less than twenty (20)
 15 years in a unit, including renewal options.
- 16 (8) "Condominium" means a common interest community in
 17 which parts of the real estate are designated for separate
 18 ownership and the remainder of the real estate is designated
 19 for common ownership solely by the owners of those parts. A
 20 common interest community is not a condominium unless the
 21 undivided interests in the common elements are vested in the
 22 unit owners.
- 23 (9) "Conversion building" means a building that at any time
 24 before creation of the common interest community was
 25 occupied wholly or partially by persons other than purchasers
 26 and persons who occupy with the consent of purchasers.
- 27 (10) "Cooperative" means a common interest community in
 28 which the real estate is owned by an association, each of
 29 whose members is entitled by virtue of the member's
 30 ownership interest in the association to exclusive possession of
 31 a unit.
- 32 (11) "Dealer" means a person in the business of selling units
 33 for the person's own account.
- 34 (12) "Declarant" means any person or group of persons
 35 acting in concert who:
- 36 (A) as part of a common promotional plan, offers to
 37 dispose of the person's or the group's interest in a unit not
 38 previously disposed of; or
- 39 (B) reserves or succeeds to any special declarant right.
- 40 (13) "Declaration" means any instruments, however
 41 denominated, that create a common interest community,
 42 including any amendments to those instruments.

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(14) "Development rights" means any right or combination of rights reserved by a declarant in the declaration to:

(A) add real estate to a common interest community;

(B) create units, common elements, or limited common elements within a common interest community;

(C) subdivide units or convert units into common elements; or

(D) withdraw real estate from a common interest community.

(15) "Dispose" or "disposition" means a voluntary transfer to a purchaser of any legal or equitable interest in a unit, but the term does not include the transfer or release of a security interest.

(16) "Executive board" means the body, regardless of name, designated in the declaration to act on behalf of the association.

(17) "Identifying number" means a symbol or address that identifies only one (1) unit in a common interest community.

(18) "Leasehold common interest community" means a common interest community in which all or a portion of the real estate is subject to a lease the expiration or termination of which will terminate the common interest community or reduce its size.

(19) "Limited common element" means a part of the common elements allocated by the declaration or by operation of IC 32-25.5-2-2(2) or IC 32-25.5-2-2(4) for the exclusive use of one (1) or more but fewer than all of the units.

(20) "Master association" means an organization described in IC 32-25.5-2-20, whether or not it is also an association described in IC 32-25.5-3-1.

(21) "Offering" means any advertisement, inducement, solicitation, or attempt to encourage any person to acquire any interest in a unit, other than as security for an obligation. An advertisement in a newspaper or other periodical of general circulation, or in any broadcast medium to the general public, of a common interest community not located in Indiana, is not an offering if the advertisement states that an offering may be made only in compliance with the law of the jurisdiction in which the common interest community is located.

(22) "Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture,

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government, governmental subdivision or agency, or other legal or commercial entity.

(23) "Planned community" means a common interest community that is not a condominium or a cooperative. A condominium or cooperative may be part of a planned community.

(24) "Proprietary lease" means an agreement with the association under which a member is entitled to exclusive possession of a unit in a cooperative.

(25) "Purchaser" means a person, other than a declarant or dealer, who by means of a voluntary transfer acquires a legal or equitable interest in a unit other than:

(A) a leasehold interest (including renewal options) of less than twenty (20) years; or

(B) as security for an obligation.

(26) "Real estate" means any leasehold or other estate or interest in, over, or under land, including structures, fixtures, and other improvements and interests that by custom, usage, or law pass with a conveyance of land though not described in the contract of sale or instrument of conveyance. "Real estate" includes parcels with or without upper or lower boundaries, and spaces that may be filled with air or water.

(27) "Residential purposes" means use for dwelling or recreational purposes, or both.

(28) "Security interest" means an interest in real estate or personal property, created by contract or conveyance, which secures payment or performance of an obligation. The term includes a lien created by a mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security, assignment of lease or rents intended as security, pledge of an ownership interest in an association, and any other consensual lien or title retention contract intended as security for an obligation.

(29) "Special declarant rights" means rights reserved for the benefit of a declarant to:

(A) complete improvements indicated on plats and plans filed with the declaration or, in a cooperative, to complete improvements described in the public offering statement under IC 32-25.5-4-3(a)(2);

(B) exercise any development right;

(C) maintain sales offices, management offices, signs advertising the common interest community, and models;

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(D) use easements through the common elements for the purpose of making improvements within the common interest community or within real estate that may be added to the common interest community;

(E) make the common interest community subject to a master association;

(F) merge or consolidate a common interest community with another common interest community of the same form of ownership; or

(G) appoint or remove any officer of the association or any master association or any executive board member during any period of declarant control.

(30) "Time share" means a right to occupy a unit or any of several units during five (5) or more separated time periods over a period of at least five (5) years, including renewal options, whether or not coupled with an estate or interest in a common interest community or a specified part thereof.

(31) "Unit" means a physical part of the common interest community designated for separate ownership or occupancy, the boundaries of which are described under IC 32-25.5-2-5(a)(5). If a unit in a cooperative is owned by a unit owner or is sold, conveyed, voluntarily or involuntarily encumbered, or otherwise transferred by a unit owner, the interest in that unit that is owned, sold, conveyed, encumbered, or otherwise transferred is the right to possession of that unit under a proprietary lease, coupled with the allocated interests of that unit, and the association's interest in that unit is not thereby affected.

(32) "Unit owner" means a declarant or other person who owns a unit, or a lessee of a unit in a leasehold common interest community whose lease expires simultaneously with any lease, the expiration or termination of which will remove the unit from the common interest community, but does not include a person having an interest in a unit solely as security for an obligation. In a condominium or planned community, the declarant is the owner of any unit created by the declaration. In a cooperative, the declarant is treated as the owner of any unit to which allocated interests have been allocated until that unit has been conveyed to another person.

Sec. 4. Except as expressly provided in this article, its provisions may not be varied by agreement, and rights conferred by it may not be waived. Except as provided in section 7 of this chapter, a

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1 declarant may not act under a power of attorney, or use any other
 2 device, to evade the limitations or prohibitions of this article or the
 3 declaration.

4 Sec. 5. (a) In a cooperative, unless the declaration provides that
 5 a unit owner's interest in a unit and its allocated interests is real
 6 estate for all purposes, that interest is personal property.

7 (b) In a condominium or planned community:

8 (1) if there is any unit owner other than a declarant, each unit
 9 that has been created, together with its interest in the common
 10 elements, constitutes for all purposes a separate parcel of real
 11 estate; and

12 (2) if there is any unit owner other than a declarant, each unit
 13 must be separately taxed and assessed, and no separate tax or
 14 assessment may be rendered against any common elements
 15 for which a declarant has reserved no development rights.

16 (c) Any part of the common elements for which the declarant
 17 has reserved any development right must be separately taxed and
 18 assessed against the declarant, and the declarant alone is liable for
 19 payment of those taxes.

20 (d) If there is no unit owner other than a declarant, the real
 21 estate comprising the common interest community may be taxed
 22 and assessed in any manner provided by law.

23 Sec. 6. (a) A building code may not impose any requirement
 24 upon any structure in a common interest community that it would
 25 not impose upon a physically identical development under a
 26 different form of ownership.

27 (b) In condominiums and cooperatives, no zoning, subdivision,
 28 or other real estate use law, ordinance, or regulation may prohibit
 29 the condominium or cooperative form of ownership or impose any
 30 requirement upon a condominium or cooperative that it would not
 31 impose upon a physically identical development under a different
 32 form of ownership.

33 (c) Except as provided in subsections (a) and (b), this article
 34 does not invalidate or modify any provision of any building code,
 35 zoning, subdivision, or other real estate use law, ordinance, rule, or
 36 regulation governing the use of real estate.

37 Sec. 7. (a) If a unit is acquired by eminent domain or part of a
 38 unit is acquired by eminent domain leaving the unit owner with a
 39 remnant that may not practically or lawfully be used for any
 40 purpose permitted by the declaration, the award must include
 41 compensation to the unit owner for that unit and its allocated
 42 interests, whether or not any common elements are acquired. Upon

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1 acquisition, unless the decree otherwise provides, that unit's
 2 allocated interests are automatically reallocated to the remaining
 3 units in proportion to the respective allocated interests of those
 4 units before the taking, and the association shall promptly prepare,
 5 execute, and record an amendment to the declaration reflecting the
 6 reallocations. Any remnant of a unit remaining after part of a unit
 7 is taken under this subsection is thereafter a common element.

8 (b) Except as provided in subsection (a), if part of a unit is
 9 acquired by eminent domain, the award must compensate the unit
 10 owner for the reduction in value of the unit and its interest in the
 11 common elements, whether or not any common elements are
 12 acquired. Upon acquisition, unless the decree otherwise provides:

13 (1) that unit's allocated interests are reduced in proportion to
 14 the reduction in the size of the unit, or on any other basis
 15 specified in the declaration; and

16 (2) the part of the allocated interests divested from the
 17 partially acquired unit are automatically reallocated to that
 18 unit and to the remaining units in proportion to the respective
 19 allocated interests of those units before the taking, with the
 20 partially acquired unit participating in the reallocation on the
 21 basis of its reduced allocated interests.

22 (c) If part of the common elements is acquired by eminent
 23 domain, the part of the award attributable to the common elements
 24 taken must be paid to the association. Unless the declaration
 25 provides otherwise, any part of the award attributable to the
 26 acquisition of a limited common element must be equally divided
 27 among the owners of the units to which that limited common
 28 element was allocated at the time of acquisition.

29 (d) The court decree must be recorded in every county in which
 30 any part of the common interest community is located.

31 Sec. 8. The principles of law and equity, including the law of
 32 corporations and unincorporated associations, the law of real
 33 property, and the law relative to capacity to contract, principal and
 34 agent, eminent domain, estoppel, fraud, misrepresentation, duress,
 35 coercion, mistake, receivership, substantial performance, or other
 36 validating or invalidating cause, supplement the provisions of this
 37 article, except to the extent inconsistent with this article.

38 Sec. 9. This article being a general act intended as a unified
 39 coverage of its subject matter, no part of it shall be construed to be
 40 impliedly repealed by subsequent legislation if that construction
 41 can reasonably be avoided.

42 Sec. 10. This article shall be applied and construed so as to

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1 effectuate its general purpose to make uniform the law with respect
2 to the subject of this article among states enacting it.

3 Sec. 11. If any provision of this article or the application thereof
4 to any person or circumstances is held invalid, the invalidity does
5 not affect other provisions or applications of this article that can be
6 given effect without the invalid provisions or applications, and to
7 this end the provisions of this article are severable.

8 Sec. 12. (a) The court, upon finding as a matter of law that a
9 contract or contract clause was unconscionable at the time the
10 contract was made, may refuse to enforce the contract, enforce the
11 remainder of the contract without the unconscionable clause, or
12 limit the application of any unconscionable clause in order to avoid
13 an unconscionable result.

14 (b) Whenever it is claimed, or appears to the court, that a
15 contract or any contract clause is or may be unconscionable, the
16 parties, in order to aid the court in making the determination, must
17 be afforded a reasonable opportunity to present evidence as to:

- 18 (1) the commercial setting of the negotiations;
- 19 (2) whether a party has knowingly taken advantage of the
20 inability of the other party reasonably to protect the other
21 party's interests because of physical or mental infirmity,
22 illiteracy, inability to understand the language of the
23 agreement, or similar factors;
- 24 (3) the effect and purpose of the contract or clause; and
- 25 (4) if a sale, any gross disparity, at the time of contracting,
26 between the amount charged for the property and the value
27 of that property measured by the price at which similar
28 property was readily obtainable in similar transactions.

29 A disparity between the contract price and the value of the
30 property measured by the price at which similar property was
31 readily obtainable in similar transactions does not, of itself, render
32 the contract unconscionable.

33 Sec. 13. Every contract or duty governed by this article imposes
34 an obligation of good faith in its performance or enforcement.

35 Sec. 14. (a) The remedies provided by this article shall be
36 liberally administered to the end that the aggrieved party is put in
37 as good a position as if the other party had fully performed.
38 However, consequential, special, or punitive damages may not be
39 awarded except as specifically provided in this article or by other
40 rule of law.

41 (b) Any right or obligation declared by this article is enforceable
42 by judicial proceeding.

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1 **Sec. 15. (a) From time to time, the dollar amount specified in**
 2 **section 18 of this chapter must change, as provided in subsections**
 3 **(b) and (c), according to and to the extent of changes in the**
 4 **Consumer Price Index for Urban Wage Earners and Clerical**
 5 **Workers:**

6 **U.S. City Average, All Items 1967 = 100, compiled by the**
 7 **Bureau of Labor Statistics, United States Department of**
 8 **Labor, (the "index"). The index for December, 1979, which**
 9 **was 230, is the reference base index.**

10 **(b) The dollar amount specified in section 18 of this chapter and**
 11 **any amount stated in the declaration under section 18 of this**
 12 **chapter must change on July 1 of each year if the percentage of**
 13 **change, calculated to the nearest whole percentage point, between**
 14 **the index at the end of the preceding year and the reference base**
 15 **index is ten percent (10%) or more, but:**

16 **(1) the part of the percentage change in the index in excess of**
 17 **a multiple of ten percent (10%) must be disregarded, and the**
 18 **dollar amount shall change only in multiples of ten percent**
 19 **(10%) of the amount appearing in this article on the date of**
 20 **enactment;**

21 **(2) the dollar amount must not change if the amount required**
 22 **by this section is that currently in effect under this article as**
 23 **a result of earlier application of this section; and**

24 **(3) in no event may the dollar amount be reduced below the**
 25 **amount appearing in this article on the date of enactment.**

26 **(c) If the index is revised after December 1979, the percentage**
 27 **of change under this section must be calculated on the basis of the**
 28 **revised index. If the revision of the index changes the reference**
 29 **base index, a revised reference base index must be determined by**
 30 **multiplying the reference base index then applicable by the**
 31 **rebasings factor furnished by the Bureau of Labor Statistics. If the**
 32 **index is superseded, the index referred to in this section is the index**
 33 **represented by the Bureau of Labor Statistics as reflecting most**
 34 **accurately changes in the purchasing power of the dollar for**
 35 **consumers.**

36 **Sec. 16. Except as provided in sections 17 and 18 of this chapter,**
 37 **this article applies to all common interest communities created**
 38 **within Indiana after June 30, 2007. IC 32-25 does not apply to**
 39 **common interest communities created after June 30, 2007.**
 40 **Amendments to this article apply to all common interest**
 41 **communities created after June 30, 2007, or subjected to this**
 42 **article, regardless of when the amendment is adopted.**

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1 **Sec. 17. If a cooperative contains not more than twelve (12) units**
 2 **and is not subject to any development rights, it is subject only to**
 3 **sections 6 and 7 of this chapter unless the declaration provides that**
 4 **the entire article is applicable.**

5 **Sec. 18. (a) If a planned community that is not subject to any**
 6 **development right:**

7 (1) contains not more than twelve (12) units; or

8 (2) provides, in its declaration, that the annual average
 9 common expense liability of all units restricted to residential
 10 purposes, exclusive of optional user fees and any insurance
 11 premiums paid by the association, may not exceed three
 12 hundred dollars (\$300) as adjusted under section 15 of this
 13 chapter;

14 **it is subject only to sections 5, 6, and 7 of this chapter unless the**
 15 **declaration provides that this entire article is applicable.**

16 (b) The exemption provided in subsection (a)(2) applies only if:

17 (1) the declarant reasonably believes in good faith that the
 18 maximum stated assessment will be sufficient to pay the
 19 expenses of the planned community; and

20 (2) the declaration provides that the assessment may not be
 21 increased during the period of declarant control without the
 22 consent of all unit owners.

23 **Sec. 19. Except as provided in section 20 of this chapter:**

24 (1) sections 5, 6, and 7 of this chapter;

25 (2) IC 32-25.5-2-3;

26 (3) IC 32-25.5-2-4;

27 (4) IC 32-25.5-2-21;

28 (5) IC 32-25.5-3-2(a)(1) through IC 32-25.5-3-2(a)(6);

29 (6) IC 32-25.5-3-2(a)(11) through IC 32-25.5-3-2(a)(16);

30 (7) IC 32-25.5-3-11;

31 (8) IC 32-25.5-3-16;

32 (9) IC 32-25.5-3-18;

33 (10) IC 32-25.5-4-9;

34 (11) IC 32-25.5-4-17; and

35 (12) section 3 of this chapter to the extent necessary in
 36 construing any of those sections;

37 **apply to all common interest communities created in Indiana**
 38 **before July 1, 2007. However, those sections apply only with**
 39 **respect to events and circumstances occurring after June 30, 2007,**
 40 **and do not invalidate existing provisions of the declaration, bylaws,**
 41 **or plats or plans of those common interest communities.**

42 **Sec. 20. If a cooperative or planned community created in**

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1 Indiana before July 1, 2007, contains not more than twelve (12)
 2 units and is not subject to any development rights, it is subject only
 3 to sections 5, 6, and 7 of this chapter unless the declaration is
 4 amended in conformity with applicable law and with the
 5 procedures and requirements of the declaration to take advantage
 6 of the provisions of section 21 of this chapter, in which case all the
 7 sections enumerated in section 19 of this chapter apply to that
 8 cooperative or planned community.

9 Sec. 21. (a) The declaration, bylaws, or plats and plans of any
 10 common interest community created before July 1, 2007, may be
 11 amended to achieve any result permitted by this article, regardless
 12 of what applicable law provided before this article was adopted.

13 (b) An amendment to the declaration, bylaws, or plats and plans
 14 authorized by this section must be adopted in conformity with any
 15 procedures and requirements for amending the instruments
 16 specified by those instruments or, if there are none, in conformity
 17 with the amendment procedures of this article. If an amendment
 18 grants to any person any rights, powers, or privileges permitted by
 19 this article, all correlative obligations, liabilities, and restrictions
 20 in this article also apply to that person.

21 Sec. 22. (a) "Nonresidential common interest community"
 22 means a common interest community in which all units are
 23 restricted exclusively to nonresidential purposes. Except as
 24 provided in subsection (e), this section applies only to
 25 nonresidential common interest communities.

26 (b) A nonresidential common interest community is not subject
 27 to this article unless the declaration otherwise provides.

28 (c) The declaration of a nonresidential common interest
 29 community may provide that the entire article applies to the
 30 community or that only sections 5, 6, and 7 of this chapter apply.

31 (d) If the entire article applies to a nonresidential common
 32 interest community, the declaration may also require, subject to
 33 section 12 of this chapter, that:

34 (1) notwithstanding IC 32-25.5-3-5, any management
 35 contract, employment contract, lease of recreational or
 36 parking areas or facilities, and any other contract or lease
 37 between the association and a declarant or an affiliate of a
 38 declarant continues in force after the declarant turns over
 39 control of the association; and

40 (2) notwithstanding section 4 of this chapter, purchasers of
 41 units must execute proxies, powers of attorney, or similar
 42 devices in favor of the declarant regarding particular matters

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enumerated in those instruments.

(e) A common interest community that contains units restricted exclusively to nonresidential purposes and other units that may be used for residential purposes is not subject to this article unless:

(1) the units that may be used for residential purposes would comprise a common interest community in the absence of the nonresidential units; or

(2) the declaration provides that this article applies as provided in subsection (c) or (d).

Sec. 23. This article does not apply to common interest communities or units located outside Indiana, but the public offering statement provisions of this article apply to all contracts for the disposition thereof signed in Indiana by any party unless exempt under IC 32-25.5-4-1(b).

Chapter 2. Creation, Alteration, and Termination of Common Interest Communities

Sec. 1. (a) A common interest community may be created under this article only by recording a declaration executed in the same manner as a deed and, in a cooperative, by conveying the real estate subject to that declaration to the association. The declaration must be recorded in every county in which any part of the common interest community is located and must be indexed in the grantee's index in the name of the common interest community and the association and in the grantor's index in the name of each person executing the declaration.

(b) In a condominium, a declaration, or an amendment to a declaration, adding units may not be recorded unless all structural components and mechanical systems of all buildings containing or comprising any units thereby created are substantially completed in accordance with the plans, as evidenced by a recorded certificate of completion executed by an independent registered engineer, surveyor, or architect.

Sec. 2. Except as provided by the declaration:

(1) if walls, floors, or ceilings are designated as boundaries of a unit, all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, and any other materials constituting any part of the finished surfaces thereof are a part of the unit, and all other parts of the walls, floors, or ceilings are a part of the common elements;

(2) if any chute, flue, duct, wire, conduit, bearing wall, bearing column, or any other fixture lies partially within and partially outside the designated boundaries of a unit, any part thereof

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1 serving only that unit is a limited common element allocated
 2 solely to that unit, and any part thereof serving more than one
 3 unit or any part of the common elements is a part of the
 4 common elements;

5 (3) subject to subdivision (2), all spaces, interior partitions,
 6 and other fixtures and improvements within the boundaries
 7 of a unit are a part of the unit; and

8 (4) any shutters, awnings, window boxes, doorsteps, stoops,
 9 porches, balconies, patios, and all exterior doors and windows
 10 or other fixtures designed to serve a single unit, but located
 11 outside the unit's boundaries, are limited common elements
 12 allocated exclusively to that unit.

13 Sec. 3. (a) All provisions of the declaration and bylaws are
 14 severable.

15 (b) The rule against perpetuities does not apply to defeat any
 16 provision of the declaration, bylaws, rules, or regulations adopted
 17 under IC 32-25.5-3-2(a)(1).

18 (c) In the event of a conflict between the provisions of the
 19 declaration and the bylaws, the declaration prevails except to the
 20 extent the declaration is inconsistent with this article.

21 (d) Title to a unit and common elements is not rendered
 22 unmarketable or otherwise affected by reason of an insubstantial
 23 failure of the declaration to comply with this article. Whether a
 24 substantial failure impairs marketability is not affected by this
 25 article.

26 Sec. 4. A description of a unit that sets forth the name of the
 27 common interest community, the recording data for the
 28 declaration, the county in which the common interest community
 29 is located, and the identifying number of the unit, is a legally
 30 sufficient description of that unit and all rights, obligations, and
 31 interests appurtenant to that unit which were created by the
 32 declaration or bylaws.

33 Sec. 5. (a) The declaration must contain:

34 (1) the names of the common interest community and the
 35 association and a statement that the common interest
 36 community is either a condominium, cooperative, or planned
 37 community;

38 (2) the name of every county in which any part of the common
 39 interest community is situated;

40 (3) a legally sufficient description of the real estate included
 41 in the common interest community;

42 (4) a statement of the maximum number of units that the

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1 declarant reserves the right to create;

2 (5) in a condominium or planned community, a description of
3 the boundaries of each unit created by the declaration,
4 including the unit's identifying number or, in a cooperative,
5 a description, which may be by plats or plans, of each unit
6 created by the declaration, including the unit's identifying
7 number, its size or number of rooms, and its location within
8 a building if it is within a building containing more than one
9 (1) unit;

10 (6) a description of any limited common elements, other than
11 those specified in section 2(2) and 2(4) of this chapter, as
12 provided in section 9(h)(10) of this chapter and, in a planned
13 community, any real estate that is or must become common
14 elements;

15 (7) a description of any real estate, except real estate subject
16 to development rights, that may be allocated subsequently as
17 limited common elements, other than limited common
18 elements specified in section 2(2) and 2(4) of this chapter,
19 together with a statement that they may be so allocated;

20 (8) a description of any development rights and other special
21 declarant rights reserved by the declarant, together with a
22 legally sufficient description of the real estate to which each
23 of those rights applies, and a time limit within which each of
24 those rights must be exercised;

25 (9) if any development right may be exercised with respect to
26 different parcels of real estate at different times, a statement
27 to that effect together with:

28 (A) either a statement fixing the boundaries of those parts
29 and regulating the order in which those parts may be
30 subjected to the exercise of each development right or a
31 statement that no assurances are made in those regards;
32 and

33 (B) a statement as to whether, if any development right is
34 exercised in any part of the real estate subject to that
35 development right, that development right must be
36 exercised in all or in any other part of the remainder of
37 that real estate;

38 (10) any other conditions or limitations under which the rights
39 described in subdivision (8) may be exercised or will lapse;

40 (11) an allocation to each unit of the allocated interests in the
41 manner described in section 7 of this chapter;

42 (12) any restrictions:

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(A) on alienation of the units, including any restrictions on leasing that exceed the restrictions on leasing units that executive boards may impose under IC 32-25.5-3-2(c)(3); and

(B) on the amount for which a unit may be sold or on the amount that may be received by a unit owner on sale, condemnation, or casualty loss to the unit or to the common interest community, or on termination of the common interest community;

(13) the recording data for recorded easements and licenses appurtenant to or included in the common interest community or to which a part of the common interest community is or may become subject by virtue of a reservation in the declaration; and

(14) all matters required by sections 6, 7, 8, 9, 15, and 16 of this chapter and IC 32-25.5-3-3(d).

(b) The declaration may contain any other matters the declarant considers appropriate, including any restrictions on the uses of a unit or the number or other qualifications of persons who may occupy units.

Sec. 6. (a) Any lease the expiration or termination of which may terminate the common interest community or reduce its size must be recorded. Every lessor of those leases in a condominium or planned community shall sign the declaration. The declaration must state:

(1) the recording data for the lease;

(2) the date on which the lease is scheduled to expire;

(3) a legally sufficient description of the real estate subject to the lease;

(4) any right of the unit owners to redeem the reversion and the manner whereby those rights may be exercised, or a statement that they do not have those rights;

(5) any right of the unit owners to remove any improvements within a reasonable time after the expiration or termination of the lease, or a statement that they do not have those rights; and

(6) any rights of the unit owners to renew the lease and the conditions of any renewal, or a statement that they do not have those rights.

(b) After the declaration for a leasehold condominium or leasehold planned community is recorded, neither the lessor nor the lessor's successor in interest may terminate the leasehold

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1 interest of a unit owner who makes timely payment of a unit
 2 owner's share of the rent and otherwise complies with all covenants
 3 that, if violated, would entitle the lessor to terminate the lease. A
 4 unit owner's leasehold interest in a condominium or planned
 5 community is not affected by failure of any other person to pay
 6 rent or fulfill any other covenant.

7 (c) Acquisition of the leasehold interest of any unit owner by the
 8 owner of the reversion or remainder does not merge the leasehold
 9 and fee simple interests unless the leasehold interests of all unit
 10 owners subject to that reversion or remainder are acquired.

11 (d) If the expiration or termination of a lease decreases the
 12 number of units in a common interest community, the allocated
 13 interests must be reallocated in accordance with IC 32-25.5-1-7(a)
 14 as if those units had been taken by eminent domain. Reallocations
 15 must be confirmed by an amendment to the declaration prepared,
 16 executed, and recorded by the association.

17 Sec. 7. (a) The declaration must allocate to each unit:

- 18 (1) in a condominium, a fraction or percentage of undivided
 19 interests in the common elements and in the common expenses
 20 of the association and a part of the votes in the association;
 21 (2) in a cooperative, an ownership interest in the association,
 22 a fraction or percentage of the common expenses of the
 23 association, and a part of the votes in the association; and
 24 (3) in a planned community, a fraction or percentage of the
 25 common expenses of the association, and a part of the votes in
 26 the association.

27 (b) The declaration must state the formulas used to establish
 28 allocations of interests. Those allocations may not discriminate in
 29 favor of units owned by the declarant or an affiliate of the
 30 declarant.

31 (c) If units may be added to or withdrawn from the common
 32 interest community, the declaration must state the formulas to be
 33 used to reallocate the allocated interests among all units included
 34 in the common interest community after the addition or
 35 withdrawal.

36 (d) The declaration may provide:

- 37 (1) that different allocations of votes shall be made to the units
 38 on particular matters specified in the declaration;
 39 (2) for cumulative voting only for the purpose of electing
 40 members of the executive board; and
 41 (3) for class voting on specified issues affecting the class if
 42 necessary to protect valid interests of the class. A declarant

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may not utilize cumulative or class voting for the purpose of evading any limitation imposed on declarants by this article nor may units constitute a class because they are owned by a declarant.

(e) Except for minor variations due to rounding, the sum of the common expense liabilities and, in a condominium, the sum of the undivided interests in the common elements allocated at any time to all the units must each equal one (1) if stated as a fraction or one hundred percent (100%) if stated as a percentage. In the event of discrepancy between an allocated interest and the result derived from application of the pertinent formula, the allocated interest prevails.

(f) In a condominium, the common elements are not subject to partition, and any purported conveyance, encumbrance, judicial sale, or other voluntary or involuntary transfer of an undivided interest in the common elements made without the unit to which that interest is allocated is void.

(g) In a cooperative, any purported conveyance, encumbrance, judicial sale, or other voluntary or involuntary transfer of an ownership interest in the association made without the possessory interest in the unit to which that interest is related is void.

Sec. 8. (a) Except for the limited common elements described in section 2(2) and 2(4) of this chapter, the declaration must specify to which unit or units each limited common element is allocated. An allocation may not be altered without the consent of the unit owners whose units are affected.

(b) Except as the declaration otherwise provides, a limited common element may be reallocated by an amendment to the declaration executed by the unit owners between or among whose units the reallocation is made. The persons executing the amendment shall provide a copy thereof to the association, which shall record it. The amendment must be recorded in the names of the parties and the common interest community.

(c) A common element not previously allocated as a limited common element may be so allocated only under provisions in the declaration made in accordance with section 5(a)(7) of this chapter. The allocations must be made by amendments to the declaration.

Sec. 9. (a) Plats and plans are a part of the declaration and are required for all common interest communities except cooperatives. Separate plats and plans are not required by this article if all the information required by this section is contained in either a plat or plan. Each plat and plan must be clear and legible and contain a

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certification that the plat or plan contains all information required by this section.

(b) Each plat must show or project:

(1) the name and a survey or general schematic map of the entire common interest community;

(2) the location and dimensions of all real estate not subject to development rights, or subject only to the development right to withdraw, and the location and dimensions of all existing improvements within that real estate;

(3) a legally sufficient description of any real estate subject to development rights, that labels the rights applicable to each parcel;

(4) the extent of any encroachments by or upon any part of the common interest community;

(5) to the extent feasible, a legally sufficient description of all easements serving or burdening any part of the common interest community;

(6) except as provided in subsection (h), the approximate location and dimensions of any vertical unit boundaries not shown or projected on plans recorded under subsection (d) and that unit's identifying number;

(7) except as provided in subsection (h), the approximate location with reference to an established datum of any horizontal unit boundaries not shown or projected on plans recorded under subsection (d) and that unit's identifying number;

(8) a legally sufficient description of any real estate in which the unit owners will own only an estate for years, labeled as "leasehold real estate";

(9) the distance between noncontiguous parcels of real estate comprising the common interest community;

(10) the approximate location and dimensions of any porches, decks, balconies, garages, or patios allocated as limited common elements, and show or contain a narrative description of any other limited common elements; and

(11) in the case of real estate not subject to development rights, all other matters customarily shown on land surveys.

(c) A plat may also show the intended location and dimensions of any contemplated improvement to be constructed anywhere within the common interest community. Any contemplated improvement shown must be labeled either "MUST BE BUILT" or "NEED NOT BE BUILT".

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(d) Except as provided in subsection (h), to the extent not shown or projected on the plats, plans of the units must show or project:

(1) the approximate location and dimensions of the vertical boundaries of each unit and that unit's identifying number;

(2) the approximate location of any horizontal unit boundaries, with reference to an established datum, and that unit's identifying number; and

(3) the approximate location of any units in which the declarant has reserved the right to create additional units or common elements, identified appropriately.

(e) Unless the declaration provides otherwise, the horizontal boundaries of part of a unit located outside a building have the same elevation as the horizontal boundaries of the inside part and need not be depicted on the plats and plans.

(f) Upon exercising any development right, the declarant shall record either new plats and plans necessary to conform to the requirements of subsections (a), (b), and (d), or new certifications of plats and plans previously recorded if those plats and plans otherwise conform to the requirements of those subsections.

(g) Any certification of a plat or plan required by this section or section 1(b) of this chapter must be made by an independent surveyor, architect, or engineer.

(h) Plats and plans need not show the location and dimensions of the units' boundaries or their limited common elements if:

(1) the plat shows the location and dimensions of all buildings containing or comprising the units; and

(2) the declaration includes other information that shows or contains a narrative description of the general layout of the units in those buildings and the limited common elements allocated to those units.

Sec. 10. (a) To exercise any development right reserved under section 5(a)(8) of this chapter, the declarant shall prepare, execute, and record an amendment to the declaration and in a condominium or planned community comply with section 9 of this chapter. The declarant is the unit owner of any units thereby created. The amendment to the declaration must assign an identifying number to each new unit created, and, except in the case of subdivision or conversion of units described in subsection (b), reallocate the allocated interests among all units. The amendment must describe any common elements and any limited common elements thereby created and, in the case of limited common elements, designate the unit to which each is allocated to

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the extent required by section 8 of this chapter.

(b) Development rights may be reserved within any real estate added to the common interest community if the amendment adding that real estate includes all matters required by section 5 or 6 of this chapter, as the case may be, and, in a condominium or planned community, the plats and plans include all matters required by section 9 of this chapter. This provision does not extend the time limit on the exercise of development rights imposed by the declaration under section 5(a)(8) of this chapter.

(c) Whenever a declarant exercises a development right to subdivide or convert a unit previously created into additional units or common elements, or both:

(1) if the declarant converts the unit entirely to common elements, the amendment to the declaration must reallocate all the allocated interests of that unit among the other units as if that unit had been taken by eminent domain; and

(2) if the declarant subdivides the unit into two or more units, whether or not any part of the unit is converted into common elements, the amendment to the declaration must reallocate all the allocated interests of the unit among the units created by the subdivision in any reasonable manner prescribed by the declarant.

(d) If the declaration provides, under section 5(a)(8) of this chapter, that all or a part of the real estate is subject to a right of withdrawal:

(1) if all the real estate is subject to withdrawal, and the declaration does not describe separate parts of real estate subject to that right, none of the real estate may be withdrawn after a unit has been conveyed to a purchaser; and

(2) if any part is subject to withdrawal, it may not be withdrawn after a unit in that part has been conveyed to a purchaser.

Sec. 11. Subject to the provisions of the declaration and other provisions of law, a unit owner:

(1) may make any improvements or alterations to the owner's unit that do not impair the structural integrity or mechanical systems or lessen the support of any part of the common interest community;

(2) may not change the appearance of the common elements, or the exterior appearance of a unit or any other part of the common interest community, without permission of the association; and

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(3) after acquiring an adjoining unit or an adjoining part of an adjoining unit, may remove or alter any intervening partition or create apertures therein, even if the partition in whole or in part is a common element, if those acts do not impair the structural integrity or mechanical systems or lessen the support of any part of the common interest community. Removal of partitions or creation of apertures under this paragraph is not an alteration of boundaries.

Sec. 12. (a) Subject to the provisions of the declaration and other provisions of law, the boundaries between adjoining units may be relocated by an amendment to the declaration upon application to the association by the owners of those units. If the owners of the adjoining units have specified a reallocation between their units of their allocated interests, the application must state the proposed reallocations. Unless the executive board determines, within thirty (30) days, that the reallocations are unreasonable, the association shall prepare an amendment that identifies the units involved and states the reallocations. The amendment must be executed by those unit owners, contain words of conveyance between them, and, on recordation, be indexed in the name of the grantor and the grantee, and in the grantee's index in the name of the association.

(b) Subject to the provisions of the declaration and other provisions of law, boundaries between units and common elements may be relocated to incorporate common elements within a unit by an amendment to the declaration upon application to the association by the owner of the unit who proposes to relocate a boundary. Unless the declaration provides otherwise, the amendment may be approved only if persons entitled to cast at least sixty-seven percent (67%) of the votes in the association, including sixty-seven (67%) percent of the votes allocated to units not owned by the declarant, agree to the action. The amendment may describe any fees or charges payable by the owner of the affected unit in connection with the boundary relocation and the fees and charges are assets of the association. The amendment must be executed by the unit owner of the unit whose boundary is being relocated and by the association, contain words of conveyance between them, and on recordation be indexed in the name of the unit owner and the association as grantor or grantee, as appropriate.

(c) The association:

(1) in a condominium or planned community shall prepare

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1 and record plats or plans necessary to show the altered
 2 boundaries of affected units, and their dimensions and
 3 identifying numbers; and

4 (2) in a cooperative shall prepare and record amendments to
 5 the declaration, including any plans, necessary to show or
 6 describe the altered boundaries of affected units, and their
 7 dimensions and identifying numbers.

8 Sec. 13. (a) If the declaration expressly so permits, a unit may be
 9 subdivided into two (2) or more units. Subject to the provisions of
 10 the declaration and other provisions of law, upon application of a
 11 unit owner to subdivide a unit, the association shall prepare,
 12 execute, and record an amendment to the declaration, including in
 13 a condominium or planned community the plats and plans,
 14 subdividing that unit.

15 (b) The amendment to the declaration must be executed by the
 16 owner of the unit to be subdivided, assign an identifying number to
 17 each unit created, and reallocate the allocated interests formerly
 18 allocated to the subdivided unit to the new units in any reasonable
 19 manner prescribed by the owner of the subdivided unit.

20 Sec. 14. The existing physical boundaries of a unit or the
 21 physical boundaries of a unit reconstructed in substantial
 22 accordance with the description contained in the original
 23 declaration are its legal boundaries, rather than the boundaries
 24 derived from the description contained in the original declaration,
 25 regardless of vertical or lateral movement of the building or minor
 26 variance between those boundaries and the boundaries derived
 27 from the description contained in the original declaration. This
 28 section does not relieve a unit owner of liability in case of the
 29 owner's willful misconduct or relieve a declarant or any other
 30 person of liability for failure to adhere to any plats and plans or, in
 31 a cooperative, to any representation in the public offering
 32 statement.

33 Sec. 15. A declarant may maintain sales offices, management
 34 offices, and models in units or on common elements in the common
 35 interest community only if the declaration so provides and specifies
 36 the rights of a declarant with regard to the number, size, location,
 37 and relocation thereof. In a cooperative or condominium, any sales
 38 office, management office, or model not designated a unit by the
 39 declaration is a common element. If a declarant ceases to be a unit
 40 owner, the declarant ceases to have any rights with regard thereto
 41 unless it is removed promptly from the common interest
 42 community in accordance with a right to remove reserved in the

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1 declaration. Subject to any limitations in the declaration, a
 2 declarant may maintain signs on the common elements advertising
 3 the common interest community. This section is subject to the
 4 provisions of other state law and to local ordinances.

5 Sec. 16. (a) Subject to the provisions of the declaration, a
 6 declarant has an easement through the common elements as may
 7 be reasonably necessary for the purpose of discharging the
 8 declarant's obligations or exercising special declarant rights,
 9 whether arising under this article or reserved in the declaration.

10 (b) In a planned community, subject to IC 32-25.5-3-2(a)(6) and
 11 IC 32-25.5-3-12, the unit owners have an easement:

12 (1) in the common elements for purposes of access to their
 13 units; and

14 (2) to use the common elements and all real estate that must
 15 become common elements for all other purposes.

16 Sec. 17. (a) Except in cases of amendments that may be executed
 17 by a declarant under section 9(f) or 10 of this chapter, or by the
 18 association under IC 32-25.5-1-7, or section 6(d), 8(c), 12(a), or 13
 19 of this chapter or by certain unit owners under section 8(b), 12(a),
 20 13(b), or 18(b) of this chapter, and except as limited by subsection
 21 (d), the declaration, including any plats and plans, may be
 22 amended only by vote or agreement of unit owners of units to
 23 which at least sixty-seven percent (67%) of the votes in the
 24 association are allocated, or any larger majority the declaration
 25 specifies. The declaration may specify a smaller number only if all
 26 of the units are restricted exclusively to nonresidential use.

27 (b) No action to challenge the validity of an amendment adopted
 28 by the association under this section may be brought more than
 29 one (1) year after the amendment is recorded.

30 (c) Every amendment to the declaration must be recorded in
 31 every county in which any part of the common interest community
 32 is located and is effective only upon recordation. An amendment,
 33 except an amendment under section 12(a) of this chapter, must be
 34 indexed in the grantee's index in the name of the common interest
 35 community and the association and in the grantor's index in the
 36 name of the parties executing the amendment.

37 (d) Except to the extent expressly permitted or required by
 38 other provisions of this article, no amendment may create or
 39 increase special declarant rights, increase the number of units,
 40 change the boundaries of any unit or the allocated interests of a
 41 unit, in the absence of unanimous consent of the unit owners.

42 (e) Amendments to the declaration required by this article to be

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1 recorded by the association must be prepared, executed, recorded,
 2 and certified on behalf of the association by any officer of the
 3 association designated for that purpose or, in the absence of
 4 designation, by the president of the association.

5 (f) By vote or agreement of unit owners of units to which at least
 6 eighty percent (80%) of the votes in the association are allocated,
 7 or any larger percentage specified in the declaration, an
 8 amendment to the declaration may prohibit or materially restrict
 9 the permitted uses of or behavior in a unit or the number or other
 10 qualifications of persons who may occupy units. The amendment
 11 must provide reasonable protection for a use or occupancy
 12 permitted at the time the amendment was adopted.

13 (g) The time limits specified in the declaration under section
 14 5(a)(8) of this chapter within which reserved development rights
 15 must be exercised may be extended, and additional development
 16 rights may be created, if persons entitled to cast at least eighty
 17 percent (80%) of the votes in the association, including eighty
 18 percent (80%) of the votes allocated to units not owned by the
 19 declarant, agree to that action. The agreement is effective thirty
 20 (30) days after an amendment to the declaration reflecting the
 21 terms of the agreement is recorded unless all the persons holding
 22 the affected special declarant rights, or security interests in those
 23 rights, record a written objection within the thirty (30) day period,
 24 in which case the amendment is void, or consent in writing at the
 25 time the amendment is recorded, in which case the amendment is
 26 effective when recorded.

27 Sec. 18. (a) Except in the case of a taking of all the units by
 28 eminent domain or in the case of foreclosure against an entire
 29 cooperative of a security interest that has priority over the
 30 declaration, a common interest community may be terminated only
 31 by agreement of unit owners of units to which at least eighty
 32 percent (80%) of the votes in the association are allocated, or any
 33 larger percentage the declaration specifies. The declaration may
 34 specify a smaller percentage only if all of the units are restricted
 35 exclusively to nonresidential uses.

36 (b) An agreement to terminate must be evidenced by the
 37 execution of a termination agreement, or ratifications thereof, in
 38 the same manner as a deed, by the requisite number of unit
 39 owners. The termination agreement must specify a date after
 40 which the agreement will be void unless it is recorded before that
 41 date. A termination agreement and all ratifications thereof must be
 42 recorded in every county in which a part of the common interest

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community is situated and is effective only upon recordation.

(c) In the case of a condominium or planned community containing only units having horizontal boundaries described in the declaration, a termination agreement may provide that all of the common elements and units of the common interest community must be sold following termination. If, under the agreement, any real estate in the common interest community is to be sold following termination, the termination agreement must set forth the minimum terms of the sale.

(d) In the case of a condominium or planned community containing any units not having horizontal boundaries described in the declaration, a termination agreement may provide for sale of the common elements, but it may not require that the units be sold following termination, unless the declaration as originally recorded provided otherwise or all the unit owners consent to the sale.

(e) The association, on behalf of the unit owners, may contract for the sale of real estate in a common interest community, but the contract is not binding on the unit owners until approved under subsections (a) and (b). If any real estate is to be sold following termination, title to that real estate, upon termination, vests in the association as trustee for the holders of all interests in the units. Thereafter, the association has all powers necessary and appropriate to effect the sale. Until the sale has been concluded and the proceeds thereof distributed, the association continues in existence with all powers it had before termination. Proceeds of the sale must be distributed to unit owners and lienholders as their interests may appear, in accordance with subsections (h), (i), and (j). Unless otherwise specified in the termination agreement, as long as the association holds title to the real estate, each unit owner and the unit owner's successors in interest have an exclusive right to occupancy of the part of the real estate that formerly constituted the unit. During the period of that occupancy, each unit owner and the unit owner's successors in interest remain liable for all assessments and other obligations imposed on unit owners by this article or the declaration.

(f) In a condominium or planned community, if the real estate constituting the common interest community is not to be sold following termination, title to the common elements and, in a common interest community containing only units having horizontal boundaries described in the declaration, title to all the real estate in the common interest community, vests in the unit owners upon termination as tenants in common in proportion to

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1 their respective interests as provided in subsection (j), and liens on
 2 the units shift accordingly. While the tenancy in common exists,
 3 each unit owner and the unit owner's successors in interest have an
 4 exclusive right to occupancy of the part of the real estate that
 5 formerly constituted the unit.

6 (g) Following termination of the common interest community,
 7 the proceeds of any sale of real estate, together with the assets of
 8 the association, are held by the association as trustee for unit
 9 owners and holders of liens on the units as their interests may
 10 appear.

11 (h) Following termination of a condominium or planned
 12 community, creditors of the association holding liens on the units,
 13 which were recorded or otherwise perfected before termination,
 14 may enforce those liens in the same manner as any lienholder. All
 15 other creditors of the association are to be treated as if they had
 16 perfected liens on the units immediately before termination.

17 (i) In a cooperative, the declaration may provide that all
 18 creditors of the association have priority over any interests of unit
 19 owners and creditors of unit owners. In that event, following
 20 termination, creditors of the association holding liens on the
 21 cooperative that were recorded or otherwise perfected before
 22 termination may enforce their liens in the same manner as any
 23 lienholder, and any other creditor of the association is to be treated
 24 as if the creditor had perfected a lien against the cooperative
 25 immediately before termination. Unless the declaration provides
 26 that all creditors of the association have that priority:

27 (1) the lien of each creditor of the association that was
 28 perfected against the association before termination becomes,
 29 upon termination, a lien against each unit owner's interest in
 30 the unit as of the date the lien was perfected;

31 (2) any other creditor of the association is to be treated upon
 32 termination as if the creditor had perfected a lien against each
 33 unit owner's interest immediately before termination;

34 (3) the amount of the lien of an association's creditor
 35 described in subdivisions (1) and (2) against each of the unit
 36 owners' interest must be proportionate to the ratio that each
 37 unit's common expense liability bears to the common expense
 38 liability of all of the units;

39 (4) the lien of each creditor of each unit owner that was
 40 perfected before termination continues as a lien against that
 41 unit owner's unit as of the date the lien was perfected; and

42 (5) the assets of the association must be distributed to all unit

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owners and all lienholders as their interests may appear in the order described in this subsection. Creditors of the association are not entitled to payment from any unit owner in excess of the amount of the creditor's lien against that unit owner's interest.

(j) The respective interests of unit owners referred to in subsections (e), (f), (g), (h), and (i) are as follows:

(1) Except as provided in subdivision (2), the respective interests of unit owners are the fair market values of their units, allocated interests, and any limited common elements immediately before the termination, as determined by one (1) or more independent appraisers selected by the association. The decision of the independent appraisers must be distributed to the unit owners and becomes final unless disapproved within thirty (30) days after distribution by unit owners of units to which twenty-five percent (25%) of the votes in the association are allocated. The proportion of any unit owner's interest to that of all unit owners is determined by dividing the fair market value of that unit owner's unit and its allocated interests by the total fair market values of all the units and their allocated interests.

(2) If any unit or any limited common element is destroyed to the extent that an appraisal of the fair market value thereof before destruction cannot be made, the interests of all unit owners are:

(A) in a condominium, their respective common element interests immediately before the termination;

(B) in a cooperative, their respective ownership interests immediately before the termination; and

(C) in a planned community, their respective common expense liabilities immediately before the termination.

(k) In a condominium or planned community, except as provided in subsection (l), foreclosure or enforcement of a lien or encumbrance against the entire common interest community does not terminate, of itself, the common interest community, and foreclosure or enforcement of a lien or encumbrance against a part of the common interest community, other than withdrawable real estate, does not withdraw that part from the common interest community. Foreclosure or enforcement of a lien or encumbrance against withdrawable real estate, or against common elements that have been subjected to a security interest by the association under IC 32-25.5-3-12, does not withdraw, of itself, that real estate from

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1 the common interest community, but the person taking title thereto
 2 may require from the association, upon request, an amendment
 3 excluding the real estate from the common interest community.

4 (l) In a condominium or planned community, if a lien or
 5 encumbrance against a part of the real estate comprising the
 6 common interest community has priority over the declaration and
 7 the lien or encumbrance has not been partially released, the parties
 8 foreclosing the lien or encumbrance, upon foreclosure, may record
 9 an instrument excluding the real estate subject to that lien or
 10 encumbrance from the common interest community.

11 Sec. 19. (a) The declaration may require that all or a specified
 12 number or percentage of the lenders who hold security interests
 13 encumbering the units or who have extended credit to the
 14 association approve specified actions of the unit owners or the
 15 association as a condition to the effectiveness of those actions, but
 16 no requirement for approval may operate to:

17 (1) deny or delegate control over the general administrative
 18 affairs of the association by the unit owners or the executive
 19 board;

20 (2) prevent the association or the executive board from
 21 commencing, intervening in, or settling any litigation or
 22 proceeding; or

23 (3) prevent any insurance trustee or the association from
 24 receiving and distributing any insurance proceeds except
 25 under IC 32-25.5-3-13.

26 (b) A lender who has extended credit to an association secured
 27 by an assignment of income or an encumbrance on the common
 28 elements may enforce its security agreement in accordance with its
 29 terms, subject to the requirements of this article and other law.
 30 Requirements that the association must deposit its periodic
 31 common charges before default with the lender to which the
 32 association's income has been assigned, or increase its common
 33 charges at the lender's direction by amounts reasonably necessary
 34 to amortize the loan in accordance with its terms, do not violate the
 35 prohibitions on lender approval contained in subsection (a).

36 Sec. 20. (a) If the declaration provides that any of the powers
 37 described in IC 32-25.5-3-2 are to be exercised by or may be
 38 delegated to a profit or nonprofit corporation or unincorporated
 39 association that exercises those or other powers on behalf of one (1)
 40 or more common interest communities or for the benefit of the unit
 41 owners of one (1) or more common interest communities, all
 42 provisions of this article applicable to unit owners' associations

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1 apply to any such corporation or unincorporated association,
2 except as modified by this section.

3 (b) Unless it is acting in the capacity of an association described
4 in IC 32-25.5-3-1, a master association may exercise the powers set
5 forth in IC 32-25.5-3-2(a)(2) only to the extent expressly permitted
6 in the declarations of common interest communities which are part
7 of the master association or expressly described in the delegations
8 of power from those common interest communities to the master
9 association.

10 (c) If the declaration of any common interest community
11 provides that the executive board may delegate certain powers to
12 a master association, the members of the executive board have no
13 liability for the acts or omissions of the master association with
14 respect to those powers following delegation.

15 (d) The rights and responsibilities of unit owners with respect to
16 the unit owners' association set forth in IC 32-25.5-3-3,
17 IC 32-25.5-3-8, IC 32-25.5-3-9, IC 32-25.5-3-10, and
18 IC 32-25.5-3-12 apply in the conduct of the affairs of a master
19 association only to persons who elect the board of a master
20 association, whether or not those persons are otherwise unit
21 owners within the meaning of this article.

22 (e) Even if a master association is also an association described
23 in IC 32-25.5-3-1, the certificate of incorporation or other
24 instrument creating the master association and the declaration of
25 each common interest community, the powers of which are
26 assigned by the declaration or delegated to the master association,
27 may provide that the executive board of the master association
28 must be elected after the period of declarant control in any of the
29 following ways:

30 (1) All unit owners of all common interest communities
31 subject to the master association may elect all members of the
32 master association's executive board.

33 (2) All members of the executive boards of all common
34 interest communities subject to the master association may
35 elect all members of the master association's executive board.

36 (3) All unit owners of each common interest community
37 subject to the master association may elect specified members
38 of the master association's executive board.

39 (4) All members of the executive board of each common
40 interest community subject to the master association may
41 elect specified members of the master association's executive
42 board.

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1 **Sec. 21. (a) Any two (2) or more common interest communities**
 2 **of the same form of ownership, by agreement of the unit owners as**
 3 **provided in subsection (b), may be merged or consolidated into a**
 4 **single common interest community. In the event of a merger or**
 5 **consolidation, unless the agreement otherwise provides, the**
 6 **resultant common interest community is the legal successor, for all**
 7 **purposes, of all of the preexisting common interest communities,**
 8 **and the operations and activities of all associations of the**
 9 **preexisting common interest communities are merged or**
 10 **consolidated into a single association that holds all powers, rights,**
 11 **obligations, assets, and liabilities of all preexisting associations.**

12 **(b) An agreement of two (2) or more common interest**
 13 **communities to merge or consolidate under subsection (a) must be**
 14 **evidenced by an agreement prepared, executed, recorded, and**
 15 **certified by the president of the association of each of the**
 16 **preexisting common interest communities following approval by**
 17 **owners of units to which are allocated the percentage of votes in**
 18 **each common interest community required to terminate that**
 19 **common interest community. The agreement must be recorded in**
 20 **every county in which a part of the common interest community is**
 21 **located and is not effective until recorded.**

22 **(c) Every merger or consolidation agreement must provide for**
 23 **the reallocation of the allocated interests in the new association**
 24 **among the units of the resultant common interest community**
 25 **either:**

26 **(1) by stating the reallocations or the formulas upon which**
 27 **they are based; or**

28 **(2) by stating the percentage of overall allocated interests of**
 29 **the new common interest community which are allocated to**
 30 **all of the units comprising each of the preexisting common**
 31 **interest communities, and providing that the part of the**
 32 **percentages allocated to each unit formerly comprising a part**
 33 **of the preexisting common interest community must be equal**
 34 **to the percentages of allocated interests allocated to that unit**
 35 **by the declaration of the preexisting common interest**
 36 **community.**

37 **Sec. 22. In a planned community, if the right is originally**
 38 **reserved in the declaration, the declarant in addition to any other**
 39 **development right may amend the declaration at any time during**
 40 **as many years as are specified in the declaration for adding**
 41 **additional real estate to the planned community without describing**
 42 **the location of that real estate in the original declaration. However,**

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the amount of real estate added to the planned community under this section may not exceed ten percent (10%) of the real estate described in section 5(a)(3) of this chapter and the declarant may not in any event increase the number of units in the planned community beyond the number stated in the original declaration under section 5(a)(5) of this chapter.

Sec. 23. (a) The declaration for a common interest community may state that it is a master planned community if the declarant has reserved the development right to create at least five hundred (500) units that may be used for residential purposes, and at the time of the reservation that declarant owns or controls more than five hundred (500) acres on which the units may be built.

(b) If the requirements of subsection (a) are satisfied, the declaration for the master planned community need not state a maximum number of units and need not contain any of the information required by section 5(a)(3) through 5(a)(14) of this chapter until the declaration is amended under subsection (c).

(c) When each unit in a master planned community is conveyed to a purchaser, the declaration must contain:

(1) a sufficient legal description of the unit and all parts of the master planned community in which any other units have been conveyed to a purchaser; and

(2) all the information required by section 5(a)(3) through 5(a)(14) of this chapter with respect to that real estate.

(d) The only real estate in a master planned community that is subject to this article is units that have been declared or that are being offered for sale and any other real estate described under subsection (c). Other real estate that is or may become part of the master planned community is only subject to other law and to any other restrictions and limitations that appear of record.

(e) If the public offering statement conspicuously identifies the fact that the community is a master planned community, the disclosure requirements contained in IC 32-25.5-4 apply only with respect to units that have been declared or are being offered for sale in connection with the public offering statement and to the real estate described under subsection (c).

(f) Limitations in this article on the addition of unspecified real estate do not apply to a master planned community.

(g) The period of declarant control of the association for a master planned community terminates in accordance with any conditions specified in the declaration or otherwise at the time the declarant, in a recorded instrument and after giving written notice

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to all unit owners, voluntarily surrenders all rights to control the activities of the association.

Chapter 3. Management of the Common Interest Community

Sec. 1. A unit owners' association must be organized not later than the date the first unit in the common interest community is conveyed. The membership of the association at all times consists exclusively of all unit owners or, following termination of the common interest community, of all former unit owners entitled to distributions of proceeds under IC 32-25.5-2-18 or their heirs, successors, or assigns. The association must be organized as a profit or nonprofit corporation, trust, partnership, or as an unincorporated association.

Sec. 2. (a) Except as provided in subsection (b), and subject to the provisions of the declaration, the association, even if unincorporated, may:

- (1) adopt and amend bylaws, rules, and regulations;**
- (2) adopt and amend budgets for revenues, expenditures, and reserves and collect assessments for common expenses from unit owners;**
- (3) hire and discharge managing agents and other employees, agents, and independent contractors;**
- (4) institute, defend, or intervene in litigation or administrative proceedings in its own name on behalf of itself or two (2) or more unit owners on matters affecting the common interest community;**
- (5) make contracts and incur liabilities;**
- (6) regulate the use, maintenance, repair, replacement, and modification of common elements;**
- (7) cause additional improvements to be made as a part of the common elements;**
- (8) acquire, hold, encumber, and convey in its own name any right, title, or interest to real estate or personal property, but:**
 - (A) common elements in a condominium or planned community may be conveyed or subjected to a security interest only under IC 32-25.5-3-12; and**
 - (B) part of a cooperative may be conveyed, or all or part of a cooperative may be subjected to a security interest, only under IC 32-25.5-3-12;**
- (9) grant easements, leases, licenses, and concessions through or over the common elements;**
- (10) impose and receive any payments, fees, or charges for the use, rental, or operation of the common elements, other than**

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1 limited common elements described in IC 32-25.5-2-2(2) and
 2 IC 32-25.5-2-2(4), and for services provided to unit owners;
 3 (11) impose charges for late payment of assessments and, after
 4 notice and an opportunity to be heard, levy reasonable fines
 5 for violations of the declaration, bylaws, rules, and
 6 regulations of the association;

7 (12) impose reasonable charges for the preparation and
 8 recordation of amendments to the declaration, resale
 9 certificates required by IC 32-25.5-4-9, or statements of
 10 unpaid assessments;

11 (13) provide for the indemnification of its officers and
 12 executive board and maintain directors' and officers' liability
 13 insurance;

14 (14) assign its right to future income, including the right to
 15 receive common expense assessments, but only to the extent
 16 the declaration expressly so provides;

17 (15) exercise any other powers conferred by the declaration
 18 or bylaws;

19 (16) exercise all other powers that may be exercised in
 20 Indiana by legal entities of the same type as the association;

21 (17) exercise any other powers necessary and proper for the
 22 governance and operation of the association; and

23 (18) by regulation, require that disputes between the executive
 24 board and unit owners or between two or more unit owners
 25 regarding the common interest community must be submitted
 26 to nonbinding alternative dispute resolution in the manner
 27 described in the regulation as a prerequisite to
 28 commencement of a judicial proceeding.

29 (b) The declaration may not impose limitations on the power of
 30 the association to deal with the declarant that are more restrictive
 31 than the limitations imposed on the power of the association to deal
 32 with other persons.

33 (c) Unless otherwise permitted by the declaration or this article,
 34 an association may adopt rules and regulations that affect the use
 35 of or behavior in units that may be used for residential purposes
 36 only to:

- 37 (1) prevent any use of a unit that violates the declaration;
 38 (2) regulate any behavior in or occupancy of a unit that
 39 violates the declaration or adversely affects the use and
 40 enjoyment of other units or the common elements by other
 41 unit owners; or
 42 (3) restrict the leasing of residential units to the extent those

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rules are reasonably designed to meet underwriting requirements of institutional lenders who regularly lend money secured by first mortgages on units in common interest communities or regularly purchase those mortgages.

Otherwise, the association may not regulate any use of or behavior in units.

(d) If a tenant of a unit owner violates the declaration, bylaws, or rules and regulations of the association, in addition to exercising any of its powers against the unit owner, the association may:

(1) exercise directly against the tenant the powers described in subsection (a)(11);

(2) after giving notice to the tenant and the unit owner and an opportunity to be heard, levy reasonable fines against the tenant for the violation; and

(3) enforce any other rights against the tenant for the violation that the unit owner as landlord could lawfully have exercised under the lease or which the association could lawfully have exercised directly against the unit owner, or both.

(e) The rights granted under subsection (d)(3) may only be exercised if the tenant or unit owner fails to cure the violation within ten (10) days after the association notifies the tenant and unit owner of that violation.

(f) Unless a lease otherwise provides, this section does not:

(1) affect rights that the unit owner has to enforce the lease or that the association has under other law; or

(2) permit the association to enforce a lease to which it is not a party in the absence of a violation of the declaration, bylaws, or rules and regulations.

Sec. 3. (a) Except as provided in the declaration, the bylaws, subsection(b), or other provisions of this article, the executive board may act in all instances on behalf of the association. In the performance of any duties, officers and members of the executive board appointed by the declarant shall exercise the degree of care and loyalty required of a trustee. Officers and members of the executive board not appointed by the declarant shall exercise the degree of care and loyalty required of an officer or director of a nonprofit corporation organized under IC 23-7-1.1 (before its repeal August 1, 1991) or IC 23-17.

(b) The executive board may not act on behalf of the association to amend the declaration, to terminate the common interest community, or to elect members of the executive board or

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determine the qualifications, powers and duties, or terms of office of executive board members, but the executive board may fill vacancies in its membership for the unexpired part of any term.

(c) Within thirty (30) days after adoption of any proposed budget for the common interest community, the executive board shall provide a summary of the budget to all the unit owners and shall set a date for a meeting of the unit owners to consider ratification of the budget not less than fourteen (14) or more than thirty (30) days after mailing of the summary. Unless at that meeting a majority of all unit owners or any larger vote specified in the declaration reject the budget, the budget is ratified, whether or not a quorum is present. In the event the proposed budget is rejected, the periodic budget last ratified by the unit owners must be continued until such time as the unit owners ratify a subsequent budget proposed by the executive board.

(d) Subject to subsection (e), the declaration may provide for a period of declarant control of the association, during which a declarant, or persons designated by the declarant, may appoint and remove the officers and members of the executive board. Regardless of the period provided in the declaration, and except as provided in IC 32-25.5-2-23(g), a period of declarant control terminates not later than the earliest of:

- (1) sixty (60) days after conveyance of seventy-five percent (75%) of the units that may be created to unit owners other than a declarant;
- (2) two (2) years after all declarants have ceased to offer units for sale in the ordinary course of business;
- (3) two (2) years after any right to add new units was last exercised; or
- (4) the day the declarant, after giving written notice to unit owners, records an instrument voluntarily surrendering all rights to control activities of the association.

A declarant may voluntarily surrender the right to appoint and remove officers and members of the executive board before termination of that period, but in that event the declarant may require, for the duration of the period of declarant control, that specified actions of the association or executive board, as described in a recorded instrument executed by the declarant, be approved by the declarant before they become effective.

(e) Not later than sixty days (60) after conveyance of twenty-five percent (25%) of the units that may be created to unit owners other than a declarant, at least one (1) member and not less than

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1 twenty-five percent (25%) of the members of the executive board
 2 must be elected by unit owners other than the declarant. Not later
 3 than sixty (60) days after conveyance of fifty percent (50%) of the
 4 units that may be created to unit owners other than a declarant,
 5 not less than thirty-three and one-third percent (33 1/3%) of the
 6 members of the executive board must be elected by unit owners
 7 other than the declarant.

8 (f) Except as otherwise provided in IC 32-25.5-2-20(e), not later
 9 than the termination of any period of declarant control, the unit
 10 owners shall elect an executive board of at least three (3) members,
 11 at least a majority of whom must be unit owners. The executive
 12 board shall elect the officers. The executive board members and
 13 officers shall take office upon election.

14 (g) Notwithstanding any provision of the declaration or bylaws
 15 to the contrary, the unit owners, by a two-thirds (2/3) vote of all
 16 persons present and entitled to vote at any meeting of the unit
 17 owners at which a quorum is present, may remove any member of
 18 the executive board with or without cause, other than a member
 19 appointed by the declarant.

20 Sec. 4. (a) A special declarant right created or reserved under
 21 this article may be transferred only by an instrument evidencing
 22 the transfer recorded in every county in which any part of the
 23 common interest community is located. The instrument is not
 24 effective unless executed by the transferee.

25 (b) Upon transfer of any special declarant right, the liability of
 26 a transferor declarant is as follows:

27 (1) A transferor is not relieved of any obligation or liability
 28 arising before the transfer and remains liable for warranty
 29 obligations imposed upon the transferor by this article. Lack
 30 of privity does not deprive any unit owner of standing to
 31 maintain an action to enforce any obligation of the transferor.

32 (2) If a successor to any special declarant right is an affiliate
 33 of a declarant, the transferor is jointly and severally liable
 34 with the successor for any obligations or liabilities of the
 35 successor relating to the common interest community.

36 (3) If a transferor retains any special declarant rights, but
 37 transfers other special declarant rights to a successor who is
 38 not an affiliate of the declarant, the transferor is liable for any
 39 obligations or liabilities imposed on a declarant by this article
 40 or by the declaration relating to the retained special declarant
 41 rights and arising after the transfer.

42 (4) A transferor has no liability for any act or omission or any

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breach of a contractual or warranty obligation arising from the exercise of a special declarant right by a successor declarant who is not an affiliate of the transferor.

(c) Unless otherwise provided in a mortgage instrument, deed of trust, or other agreement creating a security interest, in case of foreclosure of a security interest, sale by a trustee under an agreement creating a security interest, tax sale, judicial sale, or sale under bankruptcy or receivership proceedings, of any units owned by a declarant or real estate in a common interest community subject to development rights, a person acquiring title to all the property being foreclosed or sold, but only upon the person's request, succeeds to all special declarant rights related to that property held by that declarant, or only to any rights reserved in the declaration under IC 32-25.5-2-15 and held by that declarant to maintain models, sales offices, and signs. The judgment or instrument conveying title must provide for transfer of only the special declarant rights requested.

(d) Upon foreclosure of a security interest, sale by a trustee under an agreement creating a security interest, tax sale, judicial sale, or sale under bankruptcy or receivership proceedings, of all interests in a common interest community owned by a declarant:

(1) the declarant ceases to have any special declarant rights; and

(2) the period of declarant control terminates unless the judgment or instrument conveying title provides for transfer of all special declarant rights held by that declarant to a successor declarant.

(e) The liabilities and obligations of a person who succeeds to special declarant rights are as follows:

(1) A successor to any special declarant right who is an affiliate of a declarant is subject to all obligations and liabilities imposed on the transferor by this article or by the declaration.

(2) A successor to any special declarant right, other than a successor described in clause (C) or (D) or a successor who is an affiliate of a declarant, is subject to the obligations and liabilities imposed by this article or the declaration:

(A) on a declarant that relate to the successor's exercise or nonexercise of special declarant rights; or

(B) on the successor's transferor, other than:

(i) misrepresentations by any previous declarant;

(ii) warranty obligations on improvements made by any

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previous declarant, or made before the common interest community was created;

(iii) breach of any fiduciary obligation by any previous declarant or the previous declarant's appointees to the executive board; or

(iv) any liability or obligation imposed on the transferor as a result of the transferor's acts or omissions after the transfer.

(C) A successor to only a right reserved in the declaration to maintain models, sales offices, and signs, may not exercise any other special declarant right, and is not subject to any liability or obligation as a declarant, except the obligation to provide a public offering statement and any liability arising as a result thereof.

(D) A successor to all special declarant rights held by a transferor who succeeded to those rights under a deed or other instrument of conveyance in lieu of foreclosure or a judgment or instrument conveying title under subsection (c) may declare in a recorded instrument the intention to hold those rights solely for transfer to another person. Thereafter, until transferring all special declarant rights to any person acquiring title to any unit or real estate subject to development rights owned by the successor, or until recording an instrument permitting exercise of all those rights, that successor may not exercise any of those rights other than any right held by the successor's transferor to control the executive board in accordance with section 3(d) of this chapter for the duration of any period of declarant control, and any attempted exercise of those rights is void. So long as a successor declarant may not exercise special declarant rights under this subsection, the successor declarant is not subject to any liability or obligation as a declarant other than liability for the declarant's acts and omissions under section 3(d) of this chapter.

(f) Nothing in this section subjects any successor to a special declarant right to any claims against or other obligations of a transferor declarant, other than claims and obligations arising under this article or the declaration.

Sec. 5. (a) Except as provided in IC 32-25.5-1-22, if entered into before the executive board elected by the unit owners under section 3(f) of this chapter takes office:

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(1) any management contract, employment contract, or lease of recreational or parking areas or facilities;

(2) any other contract or lease between the association and a declarant or an affiliate of a declarant; or

(3) any contract or lease that is not bona fide or was unconscionable to the unit owners at the time entered into under the circumstances then prevailing;

may be terminated without penalty by the association at any time after the executive board elected by the unit owners under section 3(f) of this chapter takes office upon not less than ninety (90) days notice to the other party.

(b) This section does not apply to:

(1) any lease the termination of that would terminate the common interest community or reduce its size, unless the real estate subject to that lease was included in the common interest community for the purpose of avoiding the right of the association to terminate a lease under this section; or

(2) a proprietary lease.

Sec. 6. (a) The bylaws of the association must provide:

(1) the number of members of the executive board and the titles of the officers of the association;

(2) election by the executive board of a president, treasurer, secretary, and any other officers of the association the bylaws specify;

(3) the qualifications, powers and duties, terms of office, and manner of electing and removing executive board members and offices and filling vacancies;

(4) which, if any, of its powers the executive board or officers may delegate to other persons or to a managing agent;

(5) which of its officers may prepare, execute, certify, and record amendments to the declaration on behalf of the association; and

(6) a method for amending the bylaws.

(b) Subject to the provisions of the declaration, the bylaws may provide for any other matters the association considers necessary and appropriate.

Sec. 7. (a) Except to the extent provided by the declaration, subsection (b), or section 13(h) of this chapter, the association is responsible for maintenance, repair, and replacement of the common elements, and each unit owner is responsible for maintenance, repair, and replacement of the owner's unit. Each unit owner shall afford to the association and the other unit

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owners, and to their agents or employees, access through the owner's unit reasonably necessary for those purposes. If damage is inflicted on the common elements or on any unit through which access is taken, the unit owner responsible for the damage, or the association if it is responsible, is liable for the prompt repair thereof.

(b) In addition to the liability that a declarant as a unit owner has under this article, the declarant alone is liable for all expenses in connection with real estate subject to development rights. No other unit owner and no other part of the common interest community is subject to a claim for payment of those expenses. Unless the declaration provides otherwise, any income or proceeds from real estate subject to development rights inures to the declarant.

(c) In a planned community, if all development rights have expired with respect to any real estate, the declarant remains liable for all expenses of that real estate unless, upon expiration, the declaration provides that the real estate becomes common elements or units.

Sec. 8. A meeting of the association must be held at least one (1) time each year. Special meetings of the association may be called by the president, a majority of the executive board, or by unit owners having twenty percent (20%), or any lower percentage specified in the bylaws, of the votes in the association. Not less than ten (10) nor more than sixty (60) days in advance of any meeting, the secretary or other officer specified in the bylaws shall cause notice to be hand delivered or sent prepaid by United States mail to the mailing address of each unit or to any other mailing address designated in writing by the unit owner. The notice of any meeting must state the date, time, and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the declaration or bylaws, any budget changes, and any proposal to remove an officer or member of the executive board.

Sec. 9. (a) Unless the bylaws provide otherwise, a quorum is present throughout any meeting of the association if persons entitled to cast twenty percent (20%) of the votes that may be cast for election of the executive board are present in person or by proxy at the beginning of the meeting.

(b) Unless the bylaws specify a larger percentage, a quorum is considered present throughout any meeting of the executive board if persons entitled to cast fifty percent (50%) of the votes on that

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board are present at the beginning of the meeting.

Sec. 10. (a) If only one (1) of several owners of a unit is present at a meeting of the association, that owner is entitled to cast all the votes allocated to that unit. If more than one (1) of the owners is present, the votes allocated to that unit may be cast only in accordance with the agreement of a majority in interest of the owners, unless the declaration expressly provides otherwise. There is majority agreement if any one (1) of the owners casts the votes allocated to that unit without protest being made promptly to the person presiding over the meeting by any of the other owners of the unit.

(b) Votes allocated to a unit may be cast by a proxy duly executed by a unit owner. If a unit is owned by more than one (1) person, each owner of the unit may vote or register protest to the casting of votes by the other owners of the unit through a duly executed proxy. A unit owner may revoke a proxy given under this section only by actual notice of revocation to the person presiding over a meeting of the association. A proxy is void if it is not dated or purports to be revocable without notice. A proxy terminates one (1) year after its date, unless it specifies a shorter term.

(c) If the declaration requires that votes on specified matters affecting the common interest community be cast by lessees rather than unit owners of leased units:

- (1) the provisions of subsections (a) and (b) apply to lessees as if they were unit owners;
- (2) unit owners who have leased their units to other persons may not cast votes on those specified matters; and
- (3) lessees are entitled to notice of meetings, access to records, and other rights respecting those matters as if they were unit owners. Unit owners must also be given notice, in the manner provided in section 8 of this chapter, of all meetings at which lessees are entitled to vote.

(d) No votes allocated to a unit owned by the association may be cast.

Sec. 11. (a) A unit owner is not liable, solely by reason of being a unit owner, for an injury or damage arising out of the condition or use of the common elements. Neither the association nor any unit owner except the declarant is liable for that declarant's torts in connection with any part of the common interest community which that declarant has the responsibility to maintain.

(b) An action alleging a wrong done by the association, including an action arising out of the condition or use of the common

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elements, may be maintained only against the association and not against any unit owner. If the wrong occurred during any period of declarant control and the association gives the declarant reasonable notice of and an opportunity to defend against the action, the declarant who then controlled the association is liable to the association or to any unit owner for:

(1) all tort losses not covered by insurance suffered by the association or that unit owner; and

(2) all costs that the association would not have incurred but for a breach of contract or other wrongful act or omission.

Whenever the declarant is liable to the association under this section, the declarant is also liable for all expenses of litigation, including reasonable attorney's fees, incurred by the association.

(c) Except as provided in IC 32-25.5-4-16(d) with respect to warranty claims, any statute of limitation affecting the association's right of action against a declarant under this article is tolled until the period of declarant control terminates. A unit owner is not precluded from maintaining an action contemplated by this section because the owner is a unit owner or a member or officer of the association. Liens resulting from judgments against the association are governed by section 17 of this chapter.

Sec. 12. (a) In a condominium or planned community, parts of the common elements may be conveyed or subjected to a security interest by the association if persons entitled to cast at least eighty percent (80%) of the votes in the association, including eighty percent (80%) of the votes allocated to units not owned by a declarant, or any larger percentage the declaration specifies, agree to that action. However, all owners of units to which any limited common element is allocated must agree in order to convey that limited common element or subject it to a security interest. The declaration may specify a smaller percentage only if all of the units are restricted exclusively to nonresidential uses. Proceeds of the sale are an asset of the association, but the proceeds of the sale of limited common elements must be distributed equitably among the owners of units to which the limited common elements were allocated.

(b) Part of a cooperative may be conveyed and all or part of a cooperative may be subjected to a security interest by the association if persons entitled to cast at least eighty percent (80%) of the votes in the association, including eighty percent (80%) of the votes allocated to units not owned by a declarant, or any larger percentage the declaration specifies, agree to that action. However,

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1 if fewer than all of the units or limited common elements are to be
 2 conveyed or subjected to a security interest, then all unit owners of
 3 those units, or the units to which those limited common elements
 4 are allocated, must agree in order to convey those units or limited
 5 common elements or subject them to a security interest. The
 6 declaration may specify a smaller percentage only if all of the units
 7 are restricted exclusively to nonresidential uses. Proceeds of the
 8 sale are an asset of the association. Any purported conveyance or
 9 other voluntary transfer of an entire cooperative, unless made
 10 under IC 32-25.5-2-18, is void.

11 (c) An agreement to convey common elements in a condominium
 12 or planned community, or to subject them to a security interest, or
 13 in a cooperative, an agreement to convey any part of a cooperative
 14 or subject it to a security interest, must be evidenced by the
 15 execution of an agreement, or ratifications thereof, in the same
 16 manner as a deed, by the requisite number of unit owners. The
 17 agreement must specify a date after which the agreement will be
 18 void unless recorded before that date. The agreement and all
 19 ratifications thereof must be recorded in every county in which a
 20 part of the common interest community is situated, and is effective
 21 only upon recordation.

22 (d) The association, on behalf of the unit owners, may contract
 23 to convey an interest in a common interest community under
 24 subsection (a), but the contract is not enforceable against the
 25 association until approved under subsections (a), (b), and (c).
 26 Thereafter, the association has all powers necessary and
 27 appropriate to effect the conveyance or encumbrance, including
 28 the power to execute deeds or other instruments.

29 (e) Unless made under this section, any purported conveyance,
 30 encumbrance, judicial sale, or other voluntary transfer of common
 31 elements or of any other part of a cooperative is void.

32 (f) A conveyance or encumbrance of common elements or of a
 33 cooperative under this section does not deprive any unit of its
 34 rights of access and support.

35 (g) Unless the declaration otherwise provides, if the holders of
 36 first security interests on eighty percent (80%) of the units that are
 37 subject to security interests on the day the unit owners' agreement
 38 under subsection (c) is recorded consent in writing:

39 (1) a conveyance of common elements under this section
 40 terminates both the undivided interests in those common
 41 elements allocated to the units and the security interests in
 42 those undivided interests held by all persons holding security

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interests in the units; and

(2) an encumbrance of common elements under this section has priority over all preexisting encumbrances on the undivided interests in those common elements held by all persons holding security interests in the units.

(h) The consents by holders of first security interests on units described in subsection (g), or a certificate of the secretary affirming that those consents have been received by the association, may be recorded at any time before the date on which the agreement under subsection (c) becomes void. Consents or certificates so recorded are valid from the date they are recorded for purposes of calculating the percentage of consenting first security interest holders, regardless of later sales or encumbrances on those units. Even if the required percentage of first security interest holders so consent, a conveyance or encumbrance of common elements does not affect interests having priority over the declaration, or created by the association after the declaration was recorded.

(i) In a cooperative, the association may acquire, hold, encumber, or convey a proprietary lease without complying with this section.

Sec. 13. (a) Commencing not later than the time of the first conveyance of a unit to a person other than a declarant, the association shall maintain, to the extent reasonably available:

(1) property insurance on the common elements and, in a planned community, also on property that must become common elements, insuring against all risks of direct physical loss commonly insured against or, in the case of a conversion building, against fire and extended coverage perils. The total amount of insurance after application of any deductibles must be not less than eighty percent (80%) of the actual cash value of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, and other items normally excluded from property policies; and

(2) liability insurance, including medical payments insurance, in an amount determined by the executive board but not less than any amount specified in the declaration, covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the common elements and, in cooperatives, also of all units.

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(b) In the case of a building that is part of a cooperative or that contains units having horizontal boundaries described in the declaration, the insurance maintained under subsection (a)(1), to the extent reasonably available, must include the units, but need not include improvements and betterments installed by unit owners.

(c) If the insurance described in subsections (a) and (b) is not reasonably available, the association promptly shall cause notice of that fact to be hand delivered or sent prepaid by United States mail to all unit owners. The declaration may require the association to carry any other insurance, and the association in any event may carry any other insurance it considers appropriate to protect the association or the unit owners.

(d) Insurance policies carried under subsections (a) and (b) must provide that:

(1) each unit owner is an insured person under the policy with respect to liability arising out of the owner's interest in the common elements or membership in the association;

(2) the insurer waives its right to subrogation under the policy against any unit owner or member of the owner's household;

(3) no act or omission by any unit owner, unless acting within the scope of the owner's authority on behalf of the association, will void the policy or be a condition to recovery under the policy; and

(4) if, at the time of a loss under the policy, there is other insurance in the name of a unit owner covering the same risk covered by the policy, the association's policy provides primary insurance.

(e) Any loss covered by the property policy under subsections (a)(1) and (b) must be adjusted with the association, but the insurance proceeds for that loss are payable to any insurance trustee designated for that purpose, or otherwise to the association, and not to any holder of a security interest. The insurance trustee or the association shall hold any insurance proceeds in trust for the association, unit owners, and lienholders as their interests may appear. Subject to subsection (h), the proceeds must be disbursed first for the repair or restoration of the damaged property, and the association, unit owners, and lienholders are not entitled to receive payment of any part of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored, or the common interest community is terminated.

(f) An insurance policy issued to the association does not prevent

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1 a unit owner from obtaining insurance for the unit owner's own
2 benefit.

3 (g) An insurer that has issued an insurance policy under this
4 section shall issue certificates or memoranda of insurance to the
5 association and, upon written request, to any unit owner or holder
6 of a security interest. The insurer issuing the policy may not cancel
7 or refuse to renew it until thirty (30) days after notice of the
8 proposed cancellation or nonrenewal has been mailed to the
9 association, each unit owner and each holder of a security interest
10 to whom a certificate or memorandum of insurance has been
11 issued at their respective last known addresses.

12 (h) Any part of the common interest community for which
13 insurance is required under this section that is damaged or
14 destroyed must be repaired or replaced promptly by the
15 association unless the common interest community is terminated,
16 in which case IC 32-25.5-2-18 applies, repair or replacement would
17 be illegal under any state or local statute or ordinance governing
18 health or safety, or eighty percent (80%) of the unit owners,
19 including every owner of a unit or assigned limited common
20 element that will not be rebuilt, vote not to rebuild. The cost of
21 repair or replacement in excess of insurance proceeds and reserves
22 is a common expense. If the entire common interest community is
23 not repaired or replaced, the insurance proceeds attributable to the
24 damaged common elements must be used to restore the damaged
25 area to a condition compatible with the remainder of the common
26 interest community, and except to the extent that other persons will
27 be distributees, the insurance proceeds attributable to units and
28 limited common elements that are not rebuilt must be distributed
29 to the owners of those units and the owners of the units to which
30 those limited common elements were allocated, or to lienholders,
31 as their interests may appear, and the remainder of the proceeds
32 must be distributed to all the unit owners or lienholders, as their
33 interests may appear, as follows:

34 (1) In a condominium, in proportion to the common element
35 interests of all the units.

36 (2) In a cooperative or planned community, in proportion to
37 the common expense liabilities of all the units. If the unit
38 owners vote not to rebuild any unit, that unit's allocated
39 interests are automatically reallocated upon the vote as if the
40 unit had been condemned under IC 32-25.5-1-7(a), and the
41 association promptly shall prepare, execute, and record an
42 amendment to the declaration reflecting the reallocations.

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(i) The provisions of this section may be varied or waived in the case of a common interest community, all of whose units are restricted to nonresidential use.

Sec. 14. Unless otherwise provided in the declaration, any surplus funds of the association remaining after payment of or provision for common expenses and any prepayment of reserves must be paid to the unit owners in proportion to their common expense liabilities or credited to them to reduce their future common expense assessments.

Sec. 15. (a) Until the association makes a common expense assessment, the declarant shall pay all common expenses. After an assessment has been made by the association, assessments must be made at least annually, based on a budget adopted at least annually by the association.

(b) Except for assessments under subsections (c), (d), and (e), all common expenses must be assessed against all the units in accordance with the allocations set forth in the declaration under IC 32-25.5-2-7(a) and IC 32-25.5-2-7(b). Any past due common expense assessment or installment thereof bears interest at the rate established by the association not exceeding eighteen percent (18%) per year.

(c) To the extent required by the declaration:

(1) any common expense associated with the maintenance, repair, or replacement of a limited common element must be assessed against the units to which that limited common element is assigned, equally, or in any other proportion the declaration provides;

(2) any common expense or part thereof benefitting fewer than all of the units must be assessed exclusively against the units benefitted; and

(3) the costs of insurance must be assessed in proportion to risk and the costs of utilities must be assessed in proportion to usage.

(d) Assessments to pay a judgment against the association may be made only against the units in the common interest community at the time the judgment was entered, in proportion to their common expense liabilities.

(e) If any common expense is caused by the misconduct of any unit owner, the association may assess that expense exclusively against the owner's unit.

(f) If common expense liabilities are reallocated, common expense assessments and any installment thereof not yet due must

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be recalculated in accordance with the reallocated common expense liabilities.

Sec. 16. (a) The association has a statutory lien on a unit for any assessment levied against that unit or fines imposed against its unit owner. Unless the declaration otherwise provides, fees, charges, late charges, fines, and interest charged under section 2(a)(10), 2(a)(11), and 2(a)(12) are enforceable as assessments under this section. If an assessment is payable in installments, the lien is for the full amount of the assessment from the time the first installment thereof becomes due.

(b) A lien under this section is prior to all other liens and encumbrances on a unit except:

(1) liens and encumbrances recorded before the recordation of the declaration and, in a cooperative, liens and encumbrances which the association creates, assumes, or takes subject to;

(2) a first security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent, or, in a cooperative, the first security interest encumbering only the unit owner's interest and perfected before the date on which the assessment sought to be enforced became delinquent; and

(3) liens for real estate taxes and other governmental assessments or charges against the unit or cooperative.

The lien is also prior to all security interests described in subdivision (2) to the extent of the common expense assessments based on the periodic budget adopted by the association under section 15(a) of this chapter that would have become due in the absence of acceleration during the six (6) months immediately preceding institution of an action to enforce the lien. This subsection does not affect the priority of mechanic's liens, or the priority of liens for other assessments made by the association.

(c) Unless the declaration otherwise provides, if two (2) or more associations have liens for assessments created at any time on the same property, those liens have equal priority.

(d) Recording of the declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for assessment under this section is required.

(e) A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three (3) years after the full amount of the assessments becomes due.

(f) This section does not prohibit actions to recover sums for

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1 which subsection (a) creates a lien or prohibit an association from
2 taking a deed in lieu of foreclosure.

3 (g) A judgment or decree in any action brought under this
4 section must include costs and reasonable attorney's fees for the
5 prevailing party.

6 (h) The association upon written request shall furnish to a unit
7 owner a statement setting forth the amount of unpaid assessments
8 against the unit. If the unit owner's interest is real estate, the
9 statement must be in recordable form. The statement must be
10 furnished within ten (10) business days after receipt of the request
11 and is binding on the association, the executive board, and every
12 unit owner.

13 (i) In a cooperative, upon nonpayment of an assessment on a
14 unit, the unit owner may be evicted in the same manner as
15 provided by law in the case of an unlawful holdover by a
16 commercial tenant, and the lien may be foreclosed as provided by
17 this section.

18 (j) The association's lien may be foreclosed as follows:

19 (1) In a condominium or planned community, the
20 association's lien must be foreclosed in like manner as a
21 mortgage on real estate.

22 (2) In a cooperative whose unit owners' interests in the units
23 are real estate as provided in IC 32-25.5-1-5, the association's
24 lien must be foreclosed in like manner as a mortgage on real
25 estate.

26 (3) In a cooperative whose unit owners' interests in the units
27 are personal property, the association's lien must be
28 foreclosed in like manner as a security interest under the
29 uniform commercial code.

30 (k) The following apply in a cooperative if the unit owner's
31 interest in a unit is real estate:

32 (1) The association, upon nonpayment of assessments and
33 compliance with this subsection, may sell that unit at a public
34 sale or by private negotiation, and at any time and place.
35 Every aspect of the sale, including the method, advertising,
36 time, place, and terms must be reasonable. The association
37 shall give to the unit owner and any lessees of the unit owner
38 reasonable written notice of the date, time, and place of any
39 public sale or, if a private sale is intended, of the intention of
40 entering into a contract to sell and of the time after which a
41 private disposition may be made. The same notice must also
42 be sent to any other person who has a recorded interest in the

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unit which would be cut off by the sale, but only if the recorded interest was on record seven weeks before the date specified in the notice as the date of any public sale or seven weeks before the date specified in the notice as the date after which a private sale may be made. The notices required by this subsection may be sent to any address reasonable in the circumstances. Sale may not be held until five (5) weeks after the sending of the notice. The association may buy at any public sale and, if the sale is conducted by a fiduciary or other person not related to the association, at a private sale.

(2) Unless otherwise agreed, the debtor is liable for any deficiency in a foreclosure sale.

(3) The proceeds of a foreclosure sale must be applied in the following order:

(A) The reasonable expenses of sale.

(B) The reasonable expenses of securing possession before sale; holding, maintaining, and preparing the unit for sale, including payment of taxes and other governmental charges, premiums on hazard and liability insurance, and, to the extent provided for by agreement between the association and the unit owner, reasonable attorney's fees and other legal expenses incurred by the association.

(C) Satisfaction of the association's lien.

(D) Satisfaction in the order of priority of any subordinate claim of record.

(E) Remittance of any excess to the unit owner.

(4) A good faith purchaser for value acquires the unit free of the association's debt that gave rise to the lien under which the foreclosure sale occurred and any subordinate interest, even though the association or other person conducting the sale failed to comply with the requirements of this section. The person conducting the sale shall execute a conveyance to the purchaser sufficient to convey the unit and stating that it is executed by the person after a foreclosure of the association's lien by power of sale and that the person was empowered to make the sale. Signature and title or authority of the person signing the conveyance as grantor and a recital of the facts of nonpayment of the assessment and of the giving of the notices required by this subsection are sufficient proof of the facts recited and of the person's authority to sign. Further proof of authority is not required even though the association is named as grantee in the conveyance.

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(5) At any time before the association has disposed of a unit in a cooperative or entered into a contract for its disposition under the power of sale, the unit owners or the holder of any subordinate security interest may cure the unit owner's default and prevent sale or other disposition by tendering the performance due under the security agreement, including any amounts due because of exercise of a right to accelerate, plus the reasonable expenses of proceeding to foreclosure incurred to the time of tender, including reasonable attorney's fees of the creditor.

(l) In an action by an association to collect assessments or to foreclose a lien for unpaid assessments, the court may appoint a receiver to collect all sums alleged to be due and owing to a unit owner before commencement or during pendency of the action. The court may order the receiver to pay any sums held by the receiver to the association during pendency of the action to the extent of the association's common expense assessments based on a periodic budget adopted by the association under section 15 of this chapter.

Sec. 17. (a) The following apply in a condominium or planned community:

(1) Except as provided in subdivision (2), a judgment for money against the association if recorded or otherwise perfected, is not a lien on the common elements, but is a lien in favor of the judgment lienholder against all of the units in the common interest community at the time the judgment was entered. No other property of a unit owner is subject to the claims of creditors of the association.

(2) If the association has granted a security interest in the common elements to a creditor of the association under section 12 of this chapter, the holder of that security interest shall exercise its right against the common elements before its judgment lien on any unit may be enforced.

(3) Whether perfected before or after the creation of the common interest community, if a lien, other than a deed of trust or mortgage (including a judgment lien or lien attributable to work performed or materials supplied before creation of the common interest community), becomes effective against two (2) or more units, the unit owner of an affected unit may pay to the lienholder the amount of the lien attributable to the owner's unit, and the lienholder, upon receipt of payment, promptly shall deliver a release of the lien

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covering that unit. The amount of the payment must be proportionate to the ratio which that unit owner's common expense liability bears to the common expense liabilities of all unit owners whose units are subject to the lien. After payment, the association may not assess or have a lien against that unit owner's unit for any part of the common expenses incurred in connection with that lien.

(4) A judgment against the association must be indexed in the name of the common interest community and the association and, when so indexed, is notice of the lien against the units.

(b) The following apply to a cooperative:

(1) If the association receives notice of an impending foreclosure on all or any part of the association's real estate, the association shall promptly transmit a copy of that notice to each unit owner of a unit located within the real estate to be foreclosed. Failure of the association to transmit the notice does not affect the validity of the foreclosure.

(2) Whether or not a unit owner's unit is subject to the claims of the association's creditors, no other property of a unit owner is subject to those claims.

Sec. 18. The association shall keep financial records sufficiently detailed to enable the association to comply with IC 32-25.5-4-9. All financial and other records must be made reasonably available for examination by any unit owner and the owner's authorized agents.

Sec. 19. With respect to a third person dealing with the association in the association's capacity as a trustee, the existence of trust powers and their proper exercise by the association may be assumed without inquiry. A third person is not bound to inquire whether the association has power to act as trustee or is properly exercising trust powers. A third person, without actual knowledge that the association is exceeding or improperly exercising its powers, is fully protected in dealing with the association as if it possessed and properly exercised the powers it purports to exercise. A third person is not bound to assure the proper application of trust assets paid or delivered to the association in its capacity as trustee.

Chapter 4. Protection of Purchasers

Sec. 1. (a) This chapter applies to all units subject to this article, except as provided in subsection (b) or as modified or waived by agreement of purchasers of units in a common interest community in which all units are restricted to nonresidential use.

(b) Neither a public offering statement nor a resale certificate

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1 need be prepared or delivered in the case of:

- 2 (1) a gratuitous disposition of a unit;
- 3 (2) a disposition under court order;
- 4 (3) a disposition by a government or governmental agency;
- 5 (4) a disposition by foreclosure or deed in lieu of foreclosure;
- 6 (5) a disposition to a dealer;
- 7 (6) a disposition that may be canceled at any time and for any
- 8 reason by the purchaser without penalty; or
- 9 (7) a disposition of a unit restricted to nonresidential
- 10 purposes.

11 Sec. 2. (a) Except as provided in subsection (b), a declarant,
12 before offering any interest in a unit to the public, shall prepare a
13 public offering statement conforming to the requirements of
14 sections 3, 4, 5, and 6 of this chapter.

15 (b) A declarant may transfer responsibility for preparation of
16 all or a part of the public offering statement to a successor
17 declarant or to a dealer who intends to offer units in the common
18 interest community. In the event of any such transfer, the
19 transferor shall provide the transferee with any information
20 necessary to enable the transferee to fulfill the requirements of
21 subsection (a).

22 (c) Any declarant or dealer who offers a unit to a purchaser
23 shall deliver a public offering statement in the manner prescribed
24 in section 8(a) of this chapter. The person who prepared all or a
25 part of the public offering statement is liable under sections 8 and
26 17 of this chapter for any false or misleading statement set forth
27 therein or for any omission of a material fact therefrom with
28 respect to that part of the public offering statement that the person
29 prepared. If a declarant did not prepare any part of a public
30 offering statement that the declarant delivers, the declarant is not
31 liable for any false or misleading statement set forth therein or for
32 any omission of a material fact therefrom unless the declarant had
33 actual knowledge of the statement or omission or, in the exercise of
34 reasonable care, should have known of the statement or omission.

35 (d) If a unit is part of a common interest community and is part
36 of any other real estate regime in connection with the sale of which
37 the delivery of a public offering statement is required under the
38 laws of this state, a single public offering statement conforming to
39 the requirements of sections 3, 4, 5, and 6 of this chapter as those
40 requirements relate to each regime in which the unit located, and
41 to any other requirements imposed under the laws of this state,
42 may be prepared and delivered in lieu of providing two (2) or more

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public offering statements.

Sec. 3. (a) Except as provided in subsection (b), a public offering statement must contain or fully and accurately disclose:

(1) the name and principal address of the declarant and of the common interest community, and a statement that the common interest community is either a condominium, cooperative, or planned community;

(2) a general description of the common interest community, including to the extent possible, the types, number, and declarant's schedule of commencement and completion of construction of buildings, and amenities that the declarant anticipates including in the common interest community;

(3) the number of units in the common interest community;

(4) copies and a brief narrative description of the significant features of the declaration, other than any plats and plans, and any other recorded covenants, conditions, restrictions, and reservations affecting the common interest community, the bylaws, and any rules or regulations of the association, copies of any contracts and leases to be signed by purchasers at closing, and a brief narrative description of any contracts or leases that will or may be subject to cancellation by the association under IC 32-25.5-3-5;

(5) any current balance sheet and a projected budget for the association, either within or as an exhibit to the public offering statement, for one (1) year after the date of the first conveyance to a purchaser, and thereafter the current budget of the association, a statement of who prepared the budget, and a statement of the budget's assumptions concerning occupancy and inflation factors. The budget must include, without limitation:

(A) a statement of the amount, or a statement that there is no amount, included in the budget as a reserve for repairs and replacement;

(B) a statement of any other reserves;

(C) the projected common expense assessment by category of expenditures for the association; and

(D) the projected monthly common expense assessment for each type of unit;

(6) any services not reflected in the budget that the declarant provides, or expenses that the declarant pays and which the declarant expects may become at any subsequent time a common expense of the association and the projected common

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1 expense assessment attributable to each of those services or
2 expenses for the association and for each type of unit;

3 (7) any initial or special fee due from the purchaser at closing,
4 together with a description of the purpose and method of
5 calculating the fee;

6 (8) a description of any liens, defects, or encumbrances on or
7 affecting the title to the common interest community;

8 (9) a description of any financing offered or arranged by the
9 declarant;

10 (10) the terms and significant limitations of any warranties
11 provided by the declarant, including statutory warranties and
12 limitations on the enforcement thereof or on damages;

13 (11) a statement that:

14 (A) within fifteen (15) days after receipt of a public
15 offering statement a purchaser, before conveyance, may
16 cancel any contract for purchase of a unit from a
17 declarant;

18 (B) if a declarant fails to provide a public offering
19 statement to a purchaser before conveying a unit, the
20 purchaser may recover from the declarant ten percent
21 (10%) of the sales price of the unit plus ten percent (10%)
22 of the share, proportionate to the purchaser's common
23 expense liability, of any indebtedness of the association
24 secured by security interests encumbering the common
25 interest community; and

26 (C) if a purchaser receives the public offering statement
27 more than fifteen (15) days before signing a contract, the
28 purchaser cannot cancel the contract;

29 (12) a statement of any unsatisfied judgments or pending suits
30 against the association, and the status of any pending suits
31 material to the common interest community of which a
32 declarant has actual knowledge;

33 (13) a statement that any deposit made in connection with the
34 purchase of a unit will be held in an escrow account until
35 closing and will be returned to the purchaser if the purchaser
36 cancels the contract under section 8 of this chapter, together
37 with the name and address of the escrow agent;

38 (14) any restraints on alienation of any part of the common
39 interest community and any restrictions:

40 (A) on use, occupancy, and alienation of the units; and

41 (B) on the amount for which a unit may be sold or on the
42 amount that may be received by a unit owner on sale,

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- 1 condemnation, or casualty loss to the unit or to the
 2 common interest community, or on termination of the
 3 common interest community;
 4 (15) a description of the insurance coverage provided for the
 5 benefit of unit owners;
 6 (16) any current or expected fees or charges to be paid by unit
 7 owners for the use of the common elements and other facilities
 8 related to the common interest community;
 9 (17) the extent to which financial arrangements have been
 10 provided for completion of all improvements that the
 11 declarant is obligated to build under section 19 of this
 12 chapter;
 13 (18) a brief narrative description of any zoning and other land
 14 use requirements affecting the common interest community;
 15 (19) all unusual and material circumstances, features, and
 16 characteristics of the common interest community and the
 17 units; and
 18 (20) in a cooperative:
 19 (A) whether the unit owners will be entitled, for federal,
 20 state, and local income tax purposes, to a pass-through of
 21 deductions for payments made by the association for real
 22 estate taxes and interest paid the holder of a security
 23 interest encumbering the cooperative; and
 24 (B) a statement as to the effect on every unit owner if the
 25 association fails to pay real estate taxes or payments due
 26 the holder of a security interest encumbering the
 27 cooperative.
 28 (b) If a common interest community composed of not more than
 29 twelve (12) units is not subject to any development rights and no
 30 power is reserved to a declarant to make the common interest
 31 community part of a larger common interest community, group of
 32 common interest communities, or other real estate, a public
 33 offering statement may but need not include the information
 34 otherwise required by subsection (a)(9), (a)(10), (a)(15), (a)(16),
 35 (a)(17), (a)(18), and (a)(19) and the narrative descriptions of
 36 documents required by subsection (a)(4).
 37 (c) A declarant promptly shall amend the public offering
 38 statement to report any material change in the information
 39 required by this section.
 40 Sec. 4. If the declaration provides that a common interest
 41 community is subject to any development rights, the public offering
 42 statement must disclose, in addition to the information required by

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section 3 of this chapter:

- (1) the maximum number of units, and the maximum number of units per acre, that may be created;
- (2) a statement of how many or what percentage of the units that may be created will be restricted exclusively to residential use, or a statement that no representations are made regarding use restrictions;
- (3) if any of the units that may be built within real estate subject to development rights are not to be restricted exclusively to residential use, a statement, with respect to each portion of that real estate, of the maximum percentage of the real estate areas, and the maximum percentage of the floor areas of all units that may be created therein, that are not restricted exclusively to residential use;
- (4) a brief narrative description of any development rights reserved by a declarant and of any conditions relating to or limitations upon the exercise of development rights;
- (5) a statement of the maximum extent to which each unit's allocated interests may be changed by the exercise of any development right described in subdivision (3);
- (6) a statement of the extent to which any buildings or other improvements that may be erected under any development right in any part of the common interest community will be compatible with existing buildings and improvements in the common interest community in terms of architectural style, quality of construction, and size, or a statement that no assurances are made in those regards;
- (7) general descriptions of all other improvements that may be made and limited common elements that may be created within any part of the common interest community under any development right reserved by the declarant, or a statement that no assurances are made in that regard;
- (8) a statement of any limitations as to the locations of any building or other improvement that may be made within any part of the common interest community under any development right reserved by the declarant, or a statement that no assurances are made in that regard;
- (9) a statement that any limited common elements created under any development right reserved by the declarant will be of the same general types and sizes as the limited common elements within other parts of the common interest community, or a statement of the types and sizes planned, or

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a statement that no assurances are made in that regard;

(10) a statement that the proportion of limited common elements to units created under any development right reserved by the declarant will be approximately equal to the proportion existing within other parts of the common interest community, or a statement of any other assurances in that regard, or a statement that no assurances are made in that regard;

(11) a statement that all restrictions in the declaration affecting use, occupancy, and alienation of units will apply to any units created under any development right reserved by the declarant, or a statement of any differentiations that may be made as to those units, or a statement that no assurances are made in that regard; and

(12) a statement of the extent to which any assurances made under this section apply or do not apply in the event that any development right is not exercised by the declarant.

Sec. 5. If the declaration provides that ownership or occupancy of any units is or may be in time shares, the public offering statement shall disclose, in addition to the information required by section 3 of this chapter:

(1) the number and identity of units in which time shares may be created;

(2) the total number of time shares that may be created;

(3) the minimum duration of any time shares that may be created; and

(4) the extent to which the creation of time shares will or may affect the enforceability of the association's lien for assessments provided in IC 32-25.5-3-16.

Sec. 6. (a) The public offering statement of a common interest community containing any conversion building must contain, in addition to the information required by section 3 of this chapter:

(1) a statement by the declarant, based on a report prepared by an independent registered architect or engineer, describing the present condition of all structural components and mechanical and electrical installations material to the use and enjoyment of the building;

(2) a statement by the declarant of the expected useful life of each item reported on in subdivision (1) or a statement that no representations are made in that regard; and

(3) a list of any outstanding notices of uncured violations of building code or other municipal regulations, together with

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the estimated cost of curing those violations.

(b) This section applies only to buildings containing units that may be occupied for residential use.

Sec. 7. If an interest in a common interest community is currently registered with the federal Securities and Exchange Commission, a declarant satisfies all requirements relating to the preparation of a public offering statement of this article if the declarant delivers to the purchaser a copy of the public offering statement filed with the Securities and Exchange Commission.

Sec. 8. (a) A person required to deliver a public offering statement under section 2(c) of this chapter shall provide a purchaser with a copy of the public offering statement and all amendments thereto before conveyance of the unit, and not later than the date of any contract of sale. Unless a purchaser is given the public offering statement more than fifteen (15) days before execution of a contract for the purchase of a unit, the purchaser, before conveyance, may cancel the contract within fifteen (15) days after first receiving the public offering statement.

(b) If a purchaser elects to cancel a contract under subsection (a), the purchaser may do so by hand delivering notice thereof to the offeror or by mailing notice thereof by prepaid United States mail to the offeror or to the offeror's agent for service of process. Cancellation is without penalty, and all payments made by the purchaser before cancellation must be refunded promptly.

(c) If a person required to deliver a public offering statement under section 2(c) of this chapter fails to provide a purchaser to whom a unit is conveyed with that public offering statement and all amendments thereto as required by subsection (a), the purchaser, in addition to any rights to damages or other relief, is entitled to receive from that person an amount equal to ten percent (10%) of the sale price of the unit, plus ten percent (10%) of the share, proportionate to the purchaser's common expense liability, of any indebtedness of the association secured by security interests encumbering the common interest community.

Sec. 9. (a) Except in the case of a sale in which delivery of a public offering statement is required, or unless exempt under section 1(b) of this chapter, a unit owner shall furnish to a purchaser before the earlier of conveyance or transfer of the right to possession of a unit, a copy of the declaration (other than any plats and plans), the bylaws, the rules or regulations of the association, and a certificate containing:

(1) a statement disclosing the effect on the proposed

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- 1 disposition of any right of first refusal or other restraint on
- 2 the free alienability of the unit held by the association;
- 3 (2) a statement setting forth the amount of the periodic
- 4 common expense assessment and any unpaid common expense
- 5 or special assessment currently due and payable from the
- 6 selling unit owner;
- 7 (3) a statement of any other fees payable by the owner of the
- 8 unit being sold;
- 9 (4) a statement of any capital expenditures approved by the
- 10 association for the current and succeeding fiscal years;
- 11 (5) a statement of the amount of any reserves for capital
- 12 expenditures and of any parts of those reserves designated by
- 13 the association for any specified projects;
- 14 (6) the most recent regularly prepared balance sheet and
- 15 income and expense statement, if any, of the association;
- 16 (7) the current operating budget of the association;
- 17 (8) a statement of any unsatisfied judgments against the
- 18 association and the status of any pending suits in which the
- 19 association is a defendant;
- 20 (9) a statement describing any insurance coverage provided
- 21 for the benefit of unit owners;
- 22 (10) a statement as to whether the executive board has given
- 23 or received written notice that any existing uses, occupancies,
- 24 alterations, or improvements in or to the unit or to the limited
- 25 common elements assigned thereto violate any provision of
- 26 the declaration;
- 27 (11) a statement as to whether the executive board has
- 28 received written notice from a governmental agency of any
- 29 violation of environmental, health, or building codes with
- 30 respect to the unit, the limited common elements assigned
- 31 thereto, or any other part of the common interest community
- 32 which has not been cured;
- 33 (12) a statement of the remaining term of any leasehold estate
- 34 affecting the common interest community and the provisions
- 35 governing any extension or renewal thereof;
- 36 (13) a statement of any restrictions in the declaration affecting
- 37 the amount that may be received by a unit owner upon sale,
- 38 condemnation, casualty loss to the unit or the common
- 39 interest community, or termination of the common interest
- 40 community;
- 41 (14) in a cooperative, an accountant's statement, if any was
- 42 prepared, as to the deductibility for federal income tax

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purposes by the unit owner of real estate taxes and interest paid by the association;

(15) a statement describing any pending sale or encumbrance of common elements; and

(16) a statement disclosing the effect on the unit to be conveyed of any restrictions on the owner's right to use or occupy the unit or to lease the unit to another person.

(b) The association, within ten (10) days after a request by a unit owner, shall furnish a certificate containing the information necessary to enable the unit owner to comply with this section. A unit owner providing a certificate under subsection (a) is not liable to the purchaser for any erroneous information provided by the association and included in the certificate.

(c) A purchaser is not liable for any unpaid assessment or fee greater than the amount set forth in the certificate prepared by the association. A unit owner is not liable to a purchaser for the failure or delay of the association to provide the certificate in a timely manner, but the purchase contract is voidable by the purchaser until the certificate has been provided and for five (5) days thereafter or until conveyance, whichever first occurs.

Sec. 10. Any deposit made in connection with the purchase or reservation of a unit from a person required to deliver a public offering statement under section 2(c) of this chapter must be placed in escrow and held either in Indiana or in the state where the unit is located in an account designated solely for that purpose by an institution whose accounts are insured by a governmental agency or instrumentality until:

- (1) delivered to the declarant at closing;
- (2) delivered to the declarant because of the purchaser's default under a contract to purchase the unit; or
- (3) refunded to the purchaser.

Sec. 11. (a) In the case of a sale of a unit where delivery of a public offering statement is required under section 2(c) of this chapter, a seller:

(1) before conveying a unit, shall record or furnish to the purchaser releases of all liens, except liens on real estate that a declarant has the right to withdraw from the common interest community, that the purchaser does not expressly agree to take subject to or assume and that encumber:

- (A) in a condominium, that unit and its common element interest; and
- (B) in a cooperative or planned community, that unit and

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1 any limited common elements assigned thereto; or
 2 (2) shall provide a surety bond or substitute collateral for or
 3 insurance against the lien as provided for liens on real estate.

4 (b) Before conveying real estate to the association, the declarant
 5 shall have that real estate released from:

6 (1) all liens the foreclosure of which would deprive unit
 7 owners of any right of access to or easement of support of
 8 their units; and

9 (2) all other liens on that real estate unless the public offering
 10 statement describes certain real estate that may be conveyed
 11 subject to liens in specified amounts.

12 Sec. 12. (a) A declarant of a common interest community
 13 containing conversion buildings, and any dealer who intends to
 14 offer units in such a common interest community, shall give each
 15 of the residential tenants and any residential subtenant in
 16 possession of a part of a conversion building notice of the
 17 conversion and provide those persons with the public offering
 18 statement not later than one hundred twenty (120) days before the
 19 tenants and any subtenant in possession are required to vacate.
 20 The notice must set forth generally the rights of tenants and
 21 subtenants under this section and must be hand delivered to the
 22 unit or mailed by prepaid United States mail to the tenant and
 23 subtenant at the address of the unit or any other mailing address
 24 provided by a tenant. No tenant or subtenant may be required to
 25 vacate upon less than one hundred twenty (120) days notice, except
 26 by reason of nonpayment of rent, waste, or conduct that disturbs
 27 other tenants' peaceful enjoyment of the premises, and the terms
 28 of the tenancy may not be altered during that period. Failure to
 29 give notice as required by this section is a defense to an action for
 30 possession.

31 (b) For sixty (60) days after delivery or mailing of the notice
 32 described in subsection (a), the person required to give the notice
 33 shall offer to convey each unit or proposed unit occupied for
 34 residential use to the tenant who leases that unit. If a tenant fails to
 35 purchase the unit during the sixty (60) day period, the offeror may
 36 not offer to dispose of an interest in that unit during the following
 37 one hundred eighty (180) days at a price or on terms more
 38 favorable to the offeree than the price or terms offered to the
 39 tenant. This subsection does not apply to any unit in a conversion
 40 building if that unit will be restricted exclusively to nonresidential
 41 use or the boundaries of the converted unit do not substantially
 42 conform to the dimensions of the residential unit before

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conversion.

(c) If a seller, in violation of subsection (b), conveys a unit to a purchaser for value who has no knowledge of the violation, the recordation of the deed conveying the unit or, in a cooperative, the conveyance of the unit, extinguishes any right a tenant may have under subsection (b) to purchase that unit if the deed states that the seller has complied with subsection (b), but the conveyance does not affect the right of a tenant to recover damages from the seller for a violation of subsection (b).

(d) If a notice of conversion specifies a date by which a unit or proposed unit must be vacated, the notice also constitutes a notice to vacate specified by that statute.

(e) Nothing in this section permits termination of a lease by a declarant in violation of its terms.

Sec. 13. (a) Express warranties made by any seller to a purchaser of a unit, if relied upon by the purchaser, are created as follows:

(1) Any affirmation of fact or promise that relates to the unit, its use, or rights appurtenant thereto, area improvements to the common interest community that would directly benefit the unit, or the right to use or have the benefit of facilities not located in the common interest community, creates an express warranty that the unit and related rights and uses will conform to the affirmation or promise.

(2) Any model or description of the physical characteristics of the common interest community, including plans and specifications of or for improvements, creates an express warranty that the common interest community will conform to the model or description.

(3) Any description of the quantity or extent of the real estate comprising the common interest community, including plats or surveys, creates an express warranty that the common interest community will conform to the description, subject to customary tolerances.

(4) A provision that a purchaser may put a unit only to a specified use is an express warranty that the specified use is lawful.

(b) Neither formal words such as "warranty" or "guarantee" nor a specific intention to make a warranty are necessary to create an express warranty of quality, but a statement purporting to be merely an opinion or commendation of the real estate or its value does not create a warranty.

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1 (c) Any conveyance of a unit transfers to the purchaser all
2 express warranties of quality made by previous sellers.

3 Sec. 14. (a) A declarant and any dealer warrants that a unit will
4 be in at least as good condition at the earlier of the time of the
5 conveyance or delivery of possession as it was at the time of
6 contracting, reasonable wear and tear excepted.

7 (b) A declarant and any dealer impliedly warrants that a unit
8 and the common elements in the common interest community are
9 suitable for the ordinary uses of real estate of its type and that any
10 improvements made or contracted for by the declarant, or made
11 by any person before the creation of the common interest
12 community, will be:

13 (1) free from defective materials; and

14 (2) constructed in accordance with applicable law, according
15 to sound engineering and construction standards, and in a
16 workmanlike manner.

17 (c) In addition, a declarant and any dealer warrants to a
18 purchaser of a unit that may be used for residential use that an
19 existing use, continuation of which is contemplated by the parties,
20 does not violate applicable law at the earlier of the time of
21 conveyance or delivery of possession.

22 (d) Warranties imposed by this section may be excluded or
23 modified as specified in section 15 of this chapter.

24 (e) For purposes of this section, improvements made or
25 contracted for by an affiliate of a declarant are made or contracted
26 for by the declarant.

27 (f) Any conveyance of a unit transfers to the purchaser all of the
28 declarant's implied warranties of quality.

29 Sec. 15. (a) Except as limited by subsection (b) with respect to a
30 purchaser of a unit that may be used for residential use, implied
31 warranties of quality:

32 (1) may be excluded or modified by agreement of the parties;
33 and

34 (2) are excluded by expression of disclaimer, such as "as is",
35 "with all faults", or other language that in common
36 understanding calls the purchaser's attention to the exclusion
37 of warranties.

38 (b) With respect to a purchaser of a unit that may be occupied
39 for residential use, no general disclaimer of implied warranties of
40 quality is effective, but a declarant and any dealer may disclaim
41 liability in an instrument signed by the purchaser for a specified
42 defect or specified failure to comply with applicable law, if the

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defect or failure entered into and became a part of the basis of the bargain.

Sec. 16. (a) Unless a period of limitation is tolled under IC 32-25.5-3-11 or affected by subsection (d), a judicial proceeding for breach of any obligation arising under section 13 or 14 of this chapter must be commenced within six (6) years after the cause of action accrues, but the parties may agree to reduce the period of limitation to not less than two (2) years. With respect to a unit that may be occupied for residential use, an agreement to reduce the period of limitation must be evidenced by a separate instrument executed by the purchaser.

(b) Subject to subsection (c), a cause of action for breach of warranty of quality, regardless of the purchaser's lack of knowledge of the breach, accrues:

(1) as to a unit, at the time the purchaser to whom the warranty is first made enters into possession if a possessory interest was conveyed or at the time of acceptance of the instrument of conveyance if a nonpossessory interest was conveyed; and

(2) as to each common element, at the time the common element is completed or, if later, as to:

(A) a common element that is added to the common interest community by exercise of development rights, at the time the first unit which was added to the condominium by the same exercise of development rights is conveyed to a bona fide purchaser; or

(B) a common element within any other part of the common interest community, at the time the first unit is conveyed to a bona fide purchaser.

(c) If a warranty of quality explicitly extends to future performance or duration of any improvement or component of the common interest community, the cause of action accrues at the time the breach is discovered or at the end of the period for which the warranty explicitly extends, whichever is earlier.

(d) During the period of declarant control, the association may authorize an independent committee of the executive board to evaluate and enforce by any lawful means warranty claims involving the common elements, and to compromise those claims. Only members of the executive board elected by unit owners other than the declarant and other persons appointed by those independent members may serve on the committee, and the committee's decision must be free of any control by the declarant

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or any member of the executive board or officer appointed by the declarant. All costs reasonably incurred by the committee, including attorney's fees, are common expenses, and must be added to the budget annually adopted by the association under IC 32-25.5-3-15. If the committee is so created, the period of limitation for claims for these warranties begins to run from the date of the first meeting of the committee, regardless of when the period of declarant control terminates.

Sec. 17. (a) If a declarant or any other person subject to this article fails to comply with any of its provisions or any provision of the declaration or bylaws, any person or class of persons adversely affected by the failure to comply has a claim for appropriate relief. Punitive damages may be awarded for a willful failure to comply with this article. The court, in an appropriate case, may award court costs and reasonable attorney's fees.

(b) Parties to a dispute arising under this article, the declaration, or the bylaws may agree to resolve the dispute by any form of binding or nonbinding alternative dispute resolution, but:

(1) a declarant may agree with the association to do so only after the period of declarant control passes unless the agreement is made with an independent committee of the executive board elected under section 16(d) of this chapter; and

(2) an agreement to submit to any form of binding alternative dispute resolution must be in a writing signed by the parties.

Sec. 18. No promotional material may be displayed or delivered to prospective purchasers which describes or portrays an improvement that is not in existence unless the description or portrayal of the improvement in the promotional material is conspicuously labeled or identified either as "MUST BE BUILT" or as "NEED NOT BE BUILT".

Sec. 19. (a) Except for improvements labeled "NEED NOT BE BUILT", the declarant shall complete all improvements depicted on any site plan or other graphic representation, including any plats or plans prepared under IC 32-25.5-2-9, whether or not that site plan or other graphic representation is contained in the public offering statement or in any promotional material distributed by or for the declarant.

(b) The declarant is subject to liability for the prompt repair and restoration, to a condition compatible with the remainder of the common interest community, of any portion of the common interest community affected by the exercise of rights reserved

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1 pursuant to or created by IC 32-25.5-2-10, IC 32-25.5-2-11,
2 IC 32-25.5-2-12, IC 32-25.5-2-13, IC 32-25.5-2-15, or
3 IC 32-25.5-2-16.

4 Sec. 20. In the case of a sale of a unit in which delivery of a
5 public offering statement is required, a contract of sale may be
6 executed, but no interest in that unit may be conveyed, until the
7 declaration is recorded and the unit is substantially completed, as
8 evidenced by a recorded certificate of substantial completion
9 executed by an independent architect, surveyor, or engineer, or by
10 issuance of a certificate of occupancy authorized by law.

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